71-685

FILED
JAN 10 1972
E. ROBERT SEAVER, CLERK

E COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1971

No.

ROBERT J. LEHNHAUSEN,

Petitioner,

vs.

LAKE SHORE AUTO PARTS, et al.,

Respondent.

AMENDED PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North La Salle Street, Room 900,
Chicago, Illinois 60601,
793-3500 A/C 312,
Attorney for Petitioner.

FRANCIS T. CROWE,
CALVIN C. CAMPBELL,
Assistant Attorneys General,
130 North Wells Street, Room 1700,
Chicago, Illinois 60601,
793-2527 A/C 312
Of Counsel.

Printed by Authority of the State of Illinois

INDEX

LIST OF AUTHORITIES CITED

CASES:

CONSTITUTIONAL PROVISIONS AND STATUTES:

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1971

No.

ROBERT J. LEHNHAUSEN,

Petitioner,

VS.

LAKE SHORE AUTO PARTS, et al.,

Respondent.

AMENDED PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

Petitioner, Robert J. Lehnhausen, Director of the Department of Local Government Affairs, State of Illinois, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Illinois Supreme Court entered in this proceeding on July 9, 1971, holding Article IX-A of the 1870 State Constitution in contravention of the Fourteenth Amendment to the United States Constitution, and the dissenting opinion entered in this proceeding on July 26, 1971.

Petitioner respectfully submits this petition in accordance with Rules 21, 22 and 23 of the Revised Rules of the United States Supreme Court to demonstrate that the Supreme Court of the United States has jurisdiction of this appeal and that substantial federal questions are presented.

OPINIONS BELOW

The decision of the Illinois Supreme Court which is the subject of this appeal is not yet officially reported. A complete copy of the decision and the dissent filed therewith is attached to this petition as Appendix "A". The two lower court decisions involved are also attached. The decision of Judge Dahl of the Cook County Circuit Court in the *Lake Shore Auto Parts* v. *Korzen* case is attached as Appendix "B", and the decision of Judge Donovan of the Circuit Court of Cook County in the *Clemens K. Shapiro, et al* v. *Edward J. Barrett et al.* case is attached as Appendix "C".

JURISDICTION

The opinion filed July 9, 1971, and the dissent, filed July 26, 1971, related to a consolidation of three cases, two of which arose in the Circuit Court of Cook County, Illinois, and proceeded to the Supreme Court of Illinois by direct appeal; the third was an original action in the Supreme Court of Illinois.

A Petition for Rehearing was filed by petitioner herein on July 30, 1971. It was denied on August 24, 1971.

The majority opinion held that Article IX-A of the 1870 Constitution contravened the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. Jurisdiction of this Court to review this decision by Writ of Certiorari is conferred by 28 U.S.C. § 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

Article IX-A of the 1870 Illinois Constitution, submitted to the electorate on November 3, 1970 and declared ratified on November 25, 1970, the text of which is set forth below, was found by the Illinois Supreme Court to contravene the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

"Article IX-A

TAXATION OF PROPERTY

"§1. Taxation of personal property prohibited.

"Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals, ..."

"SCHEDULE

"Paragraph 1. This amendment shall become effective January 1, 1971."

"EXPLANATION OF AMENDMENT

"The amendment would abolish the personal property tax by valuation levied against individuals. It would not effect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870 Article IX-A, thus setting aside existing provisions of Article IX, Section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations."

QUESTION PRESENTED

Whether a State may, consistent with the Equal Protection Clause of the Fourteenth Amendment, abolish the *ad valorem* personal property tax with respect to individuals, but retain such tax as it applies to non-individuals?

STATEMENT OF FACTS

There is apparently no dispute as to the facts.

Prior to January 1, 1971, Section 1 of Article IX of the Illinois Constitution of 1870 provided as follows:

"Taxation of Property—Occupations—Privileges.

§ 1. The General Assembly shall provide such revenue as may be needful, by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion of his, her, or its property—such value to be ascertained by some person or persons, to be

elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery-keepers, liquor-dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall, from time to time, direct by general law, uniform as to the class upon which it operates."

Pursuant to this constitutional provision, an *ad valorem* personal property tax was imposed upon all entities, individuals, partnerships, corporations, etc., on the value of their personal property. It is a matter of public record in the State of Illinois that this tax has been most inequitable and has lacked uniformity and consistency in its application to the taxpayers of this State. The personal property tax, if enforced, assessed and collected as provided for by law would have been confiscatory in most instances. It has been, through the years, assessed and collected in an unconstitutional manner.

The State of Illinois is divided into three population centers, spread over 102 counties. Cook County has a population approximately equal to the 101 "downstate" counties (many of the "downstate" counties actually lie north or northwest of Cook County), and a financial worth far in excess of the total of the other 101 counties. Cook County is divided into the City of Chicago (the second largest city in the United States) and the Cook County suburban area. Except as to corporations and a few very large businesses (non-incorporated), personal property taxes have neither been assessed nor collected with-

in the City of Chicago. Such is not true within the Cook County suburban area, nor is it true in the 101 "downstate" counties. Even in the areas where the personal property taxes were assessed and collected, they were not collected in accordance with the provisions of the law, nor with any regard to equity or uniformity. For example, Maurice W. Scott, Executive Vice President of the Taxpayers' Federation of Illinois, testified in public hearing before the members of the Illinois House Revenue Committee on September 8, 1971, that the *ad valorem* personal property tax as it was on November 2, 1970, actually collected the following amounts:

(a) *Cook County*—	
Personal property tax on corporations	$126,000,000
Personal property tax on unincorporated business	13,000,000
Personal property tax on individuals	2,000,000
	$141,000,000
(b) *Downstate Counties*—	
Personal property tax on corporations	$111,000,000
Personal property tax on unincorporated business	20,000,000
Personal property tax on individuals	27,000,000
	$158,000,000

At that same Committee hearing, State Representative Harber Hall (R. — Normal) stated "The farmers down my way are refusing to disclose what they own. Some are not even letting assessors on the premises. I get the distinct feeling that people are just not going to pay the personal property tax this year, no matter what."

The 1970 census figures of the United States Government show Cook County with a population of 5,427,237 and a total State population of 10,977,908. This means there is a total population in the 101 counties, excluding Cook County of 5,550,671. With the population almost equally divided between Cook County and the 101 "downstate" counties, the personal property taxes collected from individuals in Cook County in 1970 was $2,000,000, as against $27,000,000 collected from individuals in all the other 101 counties.

It is these figures which prompt public officials to describe the personal property tax in Illinois as a most onerous tax, impossible of fair administration.

This defendant has been advised by the State's Attorney of Rock Island County that, in spite of the decision which this petitioner is requesting this Court to review (ordering that personal property taxes be collected from individuals as well as corporations), Rock Island County (which is one of the larger counties in the state) will not make any attempt to collect personal property taxes from individuals.

As State Representative Harber Hall, a member of the Illinois House Revenue Committee, indicated at the public hearing on September 8, 1971, if the personal property tax situation is not remedied, there will be a taxpayers' revolt of major proportions.

The testimony of Maurice W. Scott containing the dollar amounts stated herein are contained in Appendix E, being a typewritten statement of his testimony before the House Revenue Committee on September 8, 1971.

The refusal of Rock Island County to collect the personal property tax is contained in a letter to this petitioner directed to the State's Attorney of Rock Island County under date of August 19, 1971, being Appendix F.

This Petitioner requests this Court to take judicial notice of the 1970 census figures for Cook County and the State of Illinois as compiled by the Federal Government.

Justice Davis in his dissent understated the case when he said:

> "• • • The evils and inequities in the administration of the personal property tax collections in this State are known to everyone. That these inequities apply with equal force to corporate taxpayers and individual taxpayers may, or may not, be totally true. The desire and purpose of systematically eliminating this archaic form of taxation is apparent from the actions of the people and the legislature of the State. The General Assembly, which drafted and adopted Senate Joint Resolution No. 30, had previously at the same legislative session already exempted from such taxation, household furniture and one automobile per household, used for personal pleasure. (Ill. Rev. Stat. 1969, ch. 120, par. 500.21a) The Article IX-A amendment was overwhelmingly ratified by the people of the State. The Constitution of 1970, likewise adopted by the vote of the people, expressed their concern over the form and use of personal property taxation. The newly-adopted constitution prohibits the reinstatement of any *ad valorem* personal property tax abolished before July 1, 1971, the effective date of the new constitution. This provision refers to the personal property tax as to individuals which was abolished by Article IX-A and the majority opinion runs counter to this constitutional prohibition in that it reinstates the personal property tax as to individuals. In addition, the new constitution provides that all *ad valorem* personal property taxes shall be abolished on or before January 1, 1979.
>
> "The obvious spirit of the Article IX-A amendment, the will of the people, as expressed by its adop-

tion, and the intent and purpose of the legislature, should not be thwarted unless a construction to this effect is required. Thus, it is very appropriate that we consider the mischief sought to be remedied and the purpose to be accomplished by the Article IX-A amendment. (Wolfson v. Avery, 6 Ill. 2d 78, 88). Likewise, the court should memorialize the salutary rule of law that an amendment to a state constitution should be deemed violative of the Federal Constitution only where the asserted constitutional rights cannot otherwise be protected and effectuated. *Reynolds* v. *Simms,* 377 U.S. 533, 584, 84 S. Ct. 1362, ——, 12 L. ed. 2d 506, 540."

So unenforceable within the terms and requirements of Section 1 of Article IX of the Illinois Constitution of 1870 was the assessment and collection of the personal property tax, that the Office of the Assessor of Cook County consistently distributed two forms: one for individuals who are proprietors or partners in unincorporated businesses, to include only property belonging to the business (designated as form No. 200B). For the individual listing property such as household goods and non-income-producing property, a separate form (No. 200A) was issued.

With this historical background, this Court's attention should be directed to the attempts of the electorate and the legislature to remedy the invidious discrimination that existed (and still exists as a result of the Illinois Supreme Court decision) in the assessment, enforcement and collection of the Illinois Personal Property Tax.

In 1969 the Illinois legislature passed a law which provides for the exemption of household goods and one automobile from the personal property tax. Ch. 120 § 500.21a Ill. Rev. Stat. 1969. At the same session of the Illinois

legislature, a joint resolution was drafted and adopted proposing Article IX-A as an amendment to the Illinois Constitution of 1870. That Article, its explanations and further clarifying resolutions of the General Assembly were as follows:

"AMENDMENT
to the
CONSTITUTION OF ILLINOIS
THAT WILL BE SUBMITTED TO THE VOTERS
NOVEMBER 3, 1970

This folder includes

PROPOSED AMENDMENT TO THE CONSTITUTION, EXPLANATION OF PROPOSED AMENDMENT ARGUMENTS IN FAVOR OF PROPOSED AMENDMENT
ARGUMENTS AGAINST PROPOSED AMENDMENT
FORM OF BALLOT

(Seal of the State of Illinois)

Published in compliance with Statute
by
PAUL POWELL
Secretary of State

"*To the Electors of the State of Illinois:*

At the general election to be held on the 3rd day of November, 1970, a blue ballot will be given to you and you will be called upon in your sovereign capacity as citizens to adopt or reject the following proposed amendment to the Constitution of Illinois.

PROPOSED AMENDMENT TO ADD ARTICLE IX-A

(Prohibition of taxation of personal property by valuation as to individuals.)

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals.*

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971."

"EXPLANATION OF AMENDMENT

(See Form of Ballot)

ARGUMENTS IN FAVOR OF THE PROPOSED AMENDMENT

"The purpose of the proposed addition of Article IX-A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:

"—It is not evenly administered, and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals comprising about a third of the population of the State pay no personal property taxes whatever, while the rest pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources, and, in rural areas, on their livestock, grain, farm implements, etc."

"—The taxation of personal property is a relic of the 19th century, when agriculture was the predominate occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made, for the most part, of necessities of modern life such as family automobiles and a family's furniture.

"—Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all of his personal property to the assessor. This built-in feature of personal property taxation cannot be otherwise than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day."

"If adopted by the people of Illinois, this amendment to our Constitution will:

"—Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

"—Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

"The abolition of personal property taxation should be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

"Even the placing of this question on the ballot for the people to consider has been a powerful indication to Illinois' constitutional convention delegates that

the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

"The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

"In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it."

"ARGUMENTS AGAINST THE PROPOSED AMENDMENT

"There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provision for the replacement of the lost revenues.

"—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner,

a corporation, while the user makes payments on it? Business interests generally will be at a disadvantage under this amendment.

"—It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with merchants elsewhere and, in the case of industry, with out-of-state manufacturers.

"—It will be almost impossible to administer the amended tax equally because the location of some kinds of personalty, such as shares of intangibles not owned by individuals, which can be shifted out of the State, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation.

"—It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected to the continued personal property tax when individuals are not?

"—It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about $140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

"The amendment should be defeated. The only useful purpose it can serve is to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss

from discontinuing or modifying the present system of personal property taxation."

"FORM OF BALLOT

PROPOSED AMENDMENT TO ADD ARTICLE IX-A

(Prohibition of taxation of personal property by valuation as to individuals.)

EXPLANATION OF AMENDMENT

"The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870. Article IX-A, thus setting aside existing provisions in Article IX, section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

"Place an X in blank opposite "Yes" or "No" to indicate your choice.

( ) YES For the proposed amendment to add Article IX-A to the Constitution. (Prohibi-

( ) NO tion of taxation of personal property by valuation as to individuals.)"

"CAPITOL BUILDING
SPRINGFIELD, ILLINOIS

OFFICE OF THE SECRETARY OF STATE

"I, PAUL POWELL, Secretary of State of the State of Illinois, do hereby certify that the foregoing contains a true and correct copy of the proposed amendment, the explanation of the proposed amendment, the arguments in favor of the proposed amendment, the arguments against proposed amendment and the

form in which said amendment will appear upon a separate blue ballot pursuant to Senate Joint Resolution No. 30 of the Seventy-sixth General Assembly, the original of which is on file in this office.

"IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of Illinois. Done at my office in the Capitol Building in the city of Springfield this 27th day of February A.D. 1970, and of the Independence of the United States the one hundred and ninety-fourth.

PAUL POWELL,
Secretary of State"

(SEAL)

At the general elections in November of 1969, Article IX-A as an amendment to the Illinois Constitution of 1870 was overwhelmingly ratified by the people of the State of Illinois by a ratio of between eight or seven to one. At a general election on December 15, 1970, the people of the State of Illinois ratified the Illinois Constitution of 1970, which contained a revenue article which provides as follows:

"SECTION 1. STATE REVENUE POWER.

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

"SECTION 2. NON-PROPERTY TAXES—CLASSIFICATION, EXEMPTIONS, DEDUCTIONS, ALLOWANCES AND CREDITS.

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class

shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

"SECTION 3. LIMITATIONS ON INCOME TAXATION.

(a) A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations the rate shall not exceed the rate imposed on individuals by more than a ratio of 8 to 5.

"(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed."

"SECTION 4. REAL PROPERTY TAXATION.

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

(c) Any depreciation in the value of real estate occasioned by a public easement may be deducted in assessing such property."

"SECTION 5. PERSONAL PROPERTY TAXATION.

(a) The General Assembly by law may classify personal property for purposes of taxation by valuation, abolish such taxes on any or all classes and authorize the levy of taxes in lieu of the taxation of personal property by valuation.

(b) Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated.

(c) On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971. If any taxes imposed for such replacement purposes are taxes on or measured by income, such replacement taxes shall not be considered for purposes of the limitations of one tax and the ratio of 8 to 5 set forth in Section 3(a) of this Article."

"SECTION 6. EXEMPTIONS FROM PROPERTY TAXATION.

The General Assembly by law may exempt from taxation only the property of the State, units of local governmental and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

"SECTION 7. OVERLAPPING TAXING DISTRICTS.

The General Assembly may provide by law for fair apportionment of the burden of taxation of property situated in taxing districts that lie in more than one county.

"SECTION 8. TAX SALES.

(a) Real property shall not be sold for the non-payment of taxes or special assessments without judicial proceedings.

(b) The right of redemption from all sales of real estate for the non-payment of taxes or special assessments shall exist in favor of owners and persons interested in such real estate for not less than two years following such sales. Owners, occupants and parties interested shall be given reasonable notice of the sale and the date of expiration of the period of redemption as the General Assembly provides by law."

"SECTION 9. STATE DEBT.

(a) No State debt shall be incurred except as provided in this Section. For the purpose of this Section, "State debt" means bonds or other evidences of indebtedness which are secured by the full faith and credit of the State or are required to be repaid, directly or indirectly, from tax revenue and which are incurred by the State, any department, authority, public corporation or quasi-public corporation of the State, any State college or university, or any other public agency treated by the State, but not by units of local government, or school districts.

(b) State debt for specific purposes may be incurred or the payment of State or other debt guaranteed in such amounts as may be provided either in a law passed by the vote of three-fifths of the members elected to each house of the General Assembly or in a law approved by a majority of the electors voting on the question at the next general election fol-

lowing passage. Any law providing for the incurring or guaranteeing of debt shall set forth the specific purposes and the manner of repayment.

(c) State debt in anticipation of revenues to be collected in a fiscal year may be incurred by law in an amount not exceeding 5% of the State's appropriations for that fiscal year. Such debt shall be retired from the revenues realized in that fiscal year.

(d) State debt may be incurred by law in an amount not exceeding 15% of the State's appropriations for that fiscal year to meet deficits caused by emergencies or failures of revenue. Such law shall provide that the debt be repaid within one year of the date it is incurred.

(e) State debt may be incurred by law to refund outstanding State debt if the refunding debt matures within the term of the outstanding State debt.

(f) The State, departments, authorities, public corporations and quasi-public corporations of the State, the State colleges and universities and other public agencies created by the State, may issue bonds or other evidences of indebtedness which are not secured by the full faith and credit or tax revenue of the State nor required to be repaid, directly or indirectly, from tax revenue, for such purposes and in such amoutns as may be authorized by law."

"SECTION 10. REVENUE ARTICLE NOT LIMITED.

This Article is not qualified or limited by the provisions of Article VII of this Constitution concerning the size of the majorities in the General Assembly necessary to deny or limit the power to tax granted to units of local government."

The instant case is a consolidation of three separate law suits. The first was a case entitled *Lake Shore Auto Parts Co., an Illinois corporation, et al.* v. *Bernard J. Korzen, County Collector of Cook County, et al.* (Appen-

dix B). In this case the attack was not upon the constitutionality of Article IX-A, but upon the effect it had upon the Revenue Article of the State of Illinois as it pertained to assessment and collection of personal property taxes. Judge Dahl, in his memorandum decision held that the removal of personal property taxes from individuals and not from corporations rendered the revenue act unconstitutional and that no personal property taxes could be collected.

Subsequently, an original action was filed in the Illinois Supreme Court entitled *Eugene L. Maynard, et al.* v. *Edward J. Barrett, County Clerk of Cook Counety, et al.* This action challenged the constitutionality and validity of the amendment to the Illinois Constitution of 1870 designated as Article IX-A.

Subsequently, a third action was instituted in the Circuit Court of Cook County entitled *Clemens K. Shapiro, et al.* v. *Edward J. Barrett, County Clerk of Cook County et al.* In this case, Judge Donovan ruled that Article IX-A, being an amendment to the Illinois Constitution of 1870 was constitutional and exempted from personal property taxation only such personal property owned by individuals that was used for their personal enjoyment and that of their families. (Appendix C).

These three actions were consolidated for hearing by the Illinois Supreme Court and that Court on July 9, 1971 rendered its decision (Appendix A), finding that Article IX-A, being an amendment to the Illinois Constitution of 1870, violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The effect of this decision was to reimpose the original Article IX of the Illinois Constitution of 1870 and to reinstate personal property taxes on both individuals and other legal entities, including corporations.

ARGUMENT

I.

IT IS IMPROPER TO HOLD A STATUTE OR CONSTITUTIONAL PROVISION UNCONSTITUTIONAL WHEN THERE IS AN ALTERNATIVE, REASONABLE BASIS FOR HOLDING IT CONSTITUTIONAL.

This Petitioner submits that the court below ignored the basic rule of statutory construction that a court will not opt for an interpretation which will render a statute unconstitutional if there is any fair reading of it which would keep it within the framework of the Constitution. *U. S.* v. *Cohn Grocery Co.*, 255 U.S. 81, ——————— (1920). In *Flemming* v. *Nestor*, 363 U.S. 603; 80 S. Ct. 1367; 4 L. Ed. 2d 1435 (1960), this Court stated:

> "We observe initially that only the clearest proof could suffice to establish the unconstitutionality of a statute on such a ground. Judicial inquiries into Congressional motives are at best a hazardous matter, and when that inquiry seeks to go behind objective manifestations it becomes a dubious affair indeed. Moreover, the presumption of constitutionality with which this enactment, like any other, comes to us forbids us lightly to choose that reading of the statute's setting which will invalidate it over that which will save it. '[I]t is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void.' "*Fletcher* v. *Peck* (U.S.) 6 Cranch 87, 128, 3 L. Ed. 162, 175. 363 U.S. 617.

In *U.S.* v. *National Dairy Products Co., et al.*, 372 U.S. 29; 84 S. Ct. 594; 9 L. Ed. 2d 561, reh. den. 372 U.S. 961; 83 S. Ct. 1011; 10 L. Ed. 2d 13 (1963), this Court stated:

"The strong presumptive validity that attaches to an Act of Congress has led this Court to hold many times that statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language. E.g., *Jordan* v. *DeGeorge*, 341 U.S. 223, 231, 95 L. Ed. 886, 892, 71 S. Ct. 703 (1951), and *United States* v. *Petrillo*, 332 U.S. 1, 7, 91 L. Ed. 1877, 1882, 67 S. Ct. 1538 (1947). Indeed, we have consistently sought an interpretation which supports the constitutionality of legislation."

(Citations omitted.)

It is submitted that an amendment to the Constitution of the State of Illinois overwhelmingly ratified by the electorate is entitled to be treated and considered under the same basic rule of statutory construction; that the Court will not opt for an interpretation which will render the constitutional amendment unconstitutional under the Constitution of the United States.

Justice Davis in his dissent found a reasonable alternative to finding Article IX-A (the amendment to the Constitution of the State of Illinois of 1870) unconstitutional. It is further submitted that the decision of Judge Donovan in the *Shapiro* case (App. C), found an alternative ground on which to sustain the validity of this constitutional amendment. It is submitted that the majority of the court below strained to find a basis for holding Article IX-A unconstitutional and departed from their own pronouncements (see *Thorpe* v. *Mahin*, 43 Ill. 2d 36, 250 N.E. 2d 633 (1969), that there is a reasonable basis to distinguish between corporations and individuals.

II.

THE COURT HAS CONSISTENTLY GRANTED STATE LEGISLATURES BROAD POWERS IN ADOPTING SCHEMES OF STATE TAXATION AND THE COURT BELOW ERRED IN FINDING THAT ARTICLE IX-A OF THE ILLINOIS CONSTITUTION OF 1870 VIOLATED THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

Before calling on the specifics of this Petitioner's argument, Petitioner suggests to this Court that it should consider the numerous decisions in which it has been called upon during the past century to pass upon the constitutionality of taxing schemes of the various states of this Union. The decision of the majority of the court below recognized the flexibility which this Court has granted to the states in adopting schemes of taxation and stated in its opinion:

> "The Supreme Court of the United States has thus described the governing principles:
>
> 'Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. *Bell's Gap R. Co.* v. *Pennsylvania,* 134 U.S. 232, 237; *Magoun* v. *Illinois Trust & Savings Bank,* 170 U.S. 283, 293;

• • • *State Board of Tax Comm'rs of Indiana* v. *Jackson,* 283 U.S. 527, 537, 540, 543, 75 L. Ed. 1248. 'To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure.' *Ohio Oil Co.* v. *Conway,* supra, 281 U.S. at 159.

'But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of legislation.' *Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415; *Louisville Gas & Electric Co.* v. *Coleman,* 277 U.S. 32, 37; *Air-Way Electric Appliance Corp.* v. *Day,* 266 U.S. 71, 85; *Schlesinger* v. *Wisconsin,* 270 U.S. 230, 240; *Ohio Oil Co.* v. *Conway,* 231 U.S. 146, 160 • • •.'

Allied Stores of Ohio, Inc. v. *Bowers,* (1959), 358 U.S. 522, 526-27, 79 S. Ct. 437, 3 L. Ed. 2d 480, 484-85. (Appendix A, p. A12-13)."

It is interesting to note that the majority decision cited *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522 (1959), and yet apparently ignored its significance. Of the cases cited by the majority, this is one of the few arising out of *ad valorem* personal property taxes.

An Ohio statute taxed the property of Ohio residents stored in Ohio warehouses, but allowed the property of non-residents of Ohio to be stored free.

The Court, speaking through Justice Whittaker, held this statute not to be a denial of equal protection because the Court could assume that the statute was enacted to

encourage out-of-state investment, a valid purpose for classification.

> "We cannot assume that state legislative enactments were adopted arbitrarily or without good reason to further some legitimate policy of the State. What were the special reasons, motives or policies of the Ohio Legislature for adopting the questioned proviso we do not know with certainty, *Southwestern Oil Co.* v. *Texas*, 217 U.S. 114, 126, for a state legislature need not explicitly declare its purpose. But it is obvious that it may reasonably have been the purpose and policy of the State Legislatures, in adopting the proviso, to encourage the construction or leasing and operation of warehouses in Ohio by nonresidents with the attendant benefits to the State's economy, or to stimulate the market for merchandise and agricultural products produced in Ohio by enabling nonresidents to purchase and hold them in the State for storage only, free from taxes in anticipation of future needs." (358 U.S., p. 528).

Justice Brennan, joined by Justice Harlan, wrote a separate concurring opinion stressing his belief that the Equal Protection Clause is "an instrument of federalism" and allows each state to experiment with its tax laws. Justice Stewart did not take part in the decision.

It is noteworthy that neither opinion discussed the contention (apparently made in Allied Stores' brief) that Ohio could not classify property for taxation on the basis of "residence of the owner." The majority decision also appears to have ignored the judgment of this Court in *Ohio Oil Co.* v. *Conway*, 74 L. Ed. 775; 281 U.S. 146 (1930), wherein this Court stated:

> "When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guaranties of the Federal Constitution, the states have the attribute of

sovereign powers in devising their fiscal systems to insure revenue and foster their local interests. The states, in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the 14th Amendment, but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation. The state may tax real and personal property in a different manner. It may grant exemptions. The state is not limited to ad valorem taxation. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. In levying such taxes, the state is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the state to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the 14th Amendment was intended to assure." (281 U.S. at 159).

It is submitted that the issues in this case are: (1) Was the majority of the Illinois Supreme Court correct when it held that any distinction between individuals and corporations with the imposition of *ad valorem* personal property taxes was an invidious and unreasonable distinction; (2) Was Justice Davis correct in his dissent when he held that it was reasonable to distinguish between all individually owned personal property as against all corporately owned personal property; or (3) Was Judge Donovan in error when he ruled that it is reasonable to exempt from the *ad valorem* personal property taxes "the personal property owned by individuals and used for their personal enjoyment and that of their families" and had to continue the tax upon the property of

individuals, partnerships and corporations which is used for business and profit making purposes. Petitioner respectfully submits that either the dissent of Justice Davis or the decision of Judge Donovan are reasonable interpretations of the amendment (Article IX-A) to the Illinois Constitution of 1870 and fall clearly within the basic rule of statutory construction that this Court will not adopt an interpretation which would render a statute unconstitutional, as either of those decisions would keep this amendment within the framework of the Constitution of these United States (see *U.S.* v. *Cohn Grocery Co., supra.*).

III.

THE COURT BELOW ERRED IN FINDING THAT ARTICLE IX-A OF THE ILLINOIS CONSTITUTION OF 1870 CREATED AN INVIDIOUS DISCRIMINATION AND, THEREFORE, VIOLATED THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The majority decision apparently holds that to classify property solely on the basis of ownership creates an invidious discrimination and is, therefore, unconstitutional. This Petitioner suggests that this ruling is directly contrary to the Court's decision in *Thorpe* v. *Mahin*, 43 Ill. 2d 36, 250 N.E. 2d 633 (1969), where the Supreme Court of Illinois held that classification of corporations as opposed to individuals was reasonable.

It is submitted that if a classification, whether it be for tax purposes or for any other purpose, conforms with the constitutional requirements of fairness and reason-

ableness and does not violate principles of due and equal protection, then that classification is unimpeachable. *Cipriano* v. *City of Houma,* 286 F. Supp. 823, (1965), *Edelen* v. *Hogsett,* 254 N.E. 2d 435, 44 Ill. 2d 215, (1969).

The notion that a legislature may make distinctions and classifications for taxation purposes is a fundamental precept. In *New York Rapid Transit Corporation* v. *City of New York* and its companion case, *Brooklyn E. Queens Transit Corp.* v. *City of New York,* 303 U.S. 573, 82 L. Ed. 1024 (1937), the U. S. Supreme Court declared that a state may subject a corporation to a separate or higher income tax than individuals or other corporations. In that case, Mr. Justice Reed, in handing down the court's decision, stated:

> "• • • A state may exercise a wide discretion in selecting the subjects of taxation, particularly as respects occupation taxes." (303 U.S. at 578).

The Illinois General Assembly possesses plenary power over taxation, which power has never been limited by either the state or federal constitutions. Pursuant to that power of taxation, the Illinois legislature may promulgate certain classifications which will derogate from one class and be beneficial to another. This classification process is not *per se* unconstitutional. It is only unconstitutional when the classification effects an invidious discrimination to one party.

There may be a reason for exempting one party from a tax and subjecting another class to taxation. The reasons adduced may be that one class is better able to bear the onus of taxation than another class. The classification will stand if it does not infringe on due process and equal protection and the classification is adapted to secure the purposes which the legislature intended. *Father Basil's*

Lodge v. *City of Chicago,* 393 Ill. 246, 65 N.E. 2d 805 (1947), *Suskin* v. *Nixon,* 304 F. Supp. 71 (1969). In *Faustino* v. *Immunization and Naturalization Service,* 302 F. Supp. 212, the U. S. District Court declared:

> "Where the statutory classification is patently established to accomplish a known purpose, which purpose is properly within plenary power of the legislature, attack upon that classification must fail as not presenting a substantial constitutional question, unless classification can be shown to constitute 'invidious discrimination' or to be 'patently arbitrary' or 'utterly lacking in rational justification'." (302 F. Supp. at 215).

IV.

THE COURT BELOW ERRED IN HOLDING THAT TO DISTINGUISH BETWEEN INDIVIDUALS AND CORPORATIONS WAS AN INVIDIOUS AND UNREASONABLE DISCRIMINATION.

This Petitioner urges this Court to carefully consider the judgments of Judge Dahl in the *Lake Shore Auto Parts* case (Appendix B), of Judge Donovan in the *Shapiro* case (Appendix C), and the dissenting opinion of Justice Davis in the three consolidated cases (Appendix A). Petitioner submits that the dissent is compatible and in accord with the opinion of the Attorney General of the State of Illinois submitted to this Petitioner under date of January 22, 1971 (Appendix D). To attempt to add to or in any way embellish upon the reasoning and logic contained in Justice Davis' dissent would be akin to carrying coals to Newcastle.

The Supreme Court of the State of Illinois has repeatedly held that it would, if reasonably possible, so construe a statute attacked on constitutional grounds as to promote

its essential purposes and render it constitutional, in preference to a construction which would invalidate it or raise doubts as to its validity.

Baro v. *Murphy,* 32 Ill. 2d 453, 462, 207 N.E. 2d 593 (1965); *Time, Inc.* v. *Hulman,* 31 Ill. 2d 344, 353, 201 N.E. 2d 374 (1964); *People ex rel. Moss* v. *Pate,* 30 Ill. 2d 271, 274, 195 N.E. 2d 641 (1964); *People* v. *Nastasio,* 19 Ill. 2d 524, 529, 168 N.E. 2d 728 (1960); *People* v. *Ill. Toll Highway Comm.,* 3 Ill. 2d 218, 233-234, 120 N.E. 2d 35 (1954); *People* v. *Dale,* 406 Ill. 238, 247, 92 N.E. 2d 761 (1950).

The rules of constitutional and statutory construction are essentially the same. [*People* v. *Hutchinson,* 172 Ill. 486, 497, 50 N.E. 599 (1898); *American Aberdeen-Angus Breeders' Assn.* v. *Fullerton,* 325 Ill. 323, 328, 156 N.E. 314 (1927)]. As stated by the Court in *Wolfson* v. *Avery,* 6 Ill. 2d 78, 94, 126 N.E. 2d 701 (1955):

> "If there is any distinction between the rules governing the construction of constitutions and the rules that apply to statutes, less technical ones are applied in construing constitutions. (*People ex rel. Rogerson* v. *Crawley,* 274 Ill. 139, 142). A constitutional guaranty should be interpreted in a broad and liberal spirit. Courts should not apply so strict a construction as to exclude its real object and intent."

The Illinois Supreme Court has established the following propositions: (a) that the Illinois Constitution is to be liberally construed; (b) that the meaning of constitutional language is best ascertained by considering the purposes of a disputed provision; (c) that such a provision should be construed to give effect to the spirit in which it was adopted; (d) that narrow, technical reasoning should not be applied; and (e) that which is within the intention is within the statute, though not within

the letter, and though within the letter, it is nevertheless not within the statute if not likewise within the intention. *Wolfson* v. *Avery, supra,* at 93-94 (1955); *People ex rel. Rogerson* v. *Crawley,* 274 Ill. 139, 142-143, 113 N.E. 119 (1916); *People* v. *Vickroy,* 266 Ill. 384, 390, 107 N.E. 638 (1915); *People ex rel. Gaines* v. *Garner,* 47 Ill. 246, 253 (1868); *People ex rel. Stickney* v. *Marshall,* 6 Ill. 672, 682, 689 (1844).

In construing a constitutional amendment, the Illinois Supreme Court reads it as a whole and attributes "to each part a meaning that is consistent and harmonious with the amendment's overall intendment and purpose" • • • to avoid whenever possible "irrational, absurd or unjust consequences." *People ex rel. Giannis* v. *Carpenter,* 30 Ill. 2d 24, 28, 29, 195 N.E. 2d 665 (1964).

Since the language to be construed is a constitutional provision, the object of inquiry is the understanding of the voters who adopted the instrument. [*Wolfson* v. *Avery, supra,* at 88; *City of Beardstown* v. *City of Virginia,* 76 Ill. 34, 41 (1875), mod. on reh. 81 Ill. 541 (1876).] It is the people's intent which must be determined.

The Court below was not required to seek the voters' subjective intentions but it may rule upon extrinsic evidence of intent. A court may look for a determination of proper construction to prior and contemporaneous acts, reasons for the provision in question, mischiefs intended to be remedied, the purposes intended to be accomplished, and the like. *Hamilton* v. *Rathbone,* 175 U.S. 414, 419, 20 S. Ct. 155 (1899).

> "In this connection it is appropriate to consider the historial background for the inclusion of . . . (the constitutional provision) and the debates of the members of the convention, as well as explanations of the pro-

vision published at the time." *Wolfson* v. *Avery, supra,* at 88.

Petitioner contends that a constitutionally permissive interpretation of Article IX-A clearly emerges from a consideration of the interpretative aids sanctioned by the Illinois Supreme Court; particularly that Article IX-A does not violate the equal protection clause of the Fourteenth amendment to the Federal Constitution.

This Petitioner is somewhat bewildered by the majority decision of the Illinois Supreme Court in the instant case. While they reversed the opinion of Judge Dahl in the *Lake Shore* case, wherein he threw out the entire personal property tax, they seemingly agreed with his rationale when they reinstated the tax upon both individuals and corporations. The Court appears to have been unmindful of the fact that in *Thorpe* v. *Mahin,* 43 Ill. 2d 36, 250 N.E. 2d 633, they, themselves, had found a valid distinction between corporations and individuals on which to base a discrimination. The reimposition by the Illinois Supreme Court of personal property taxes on individuals appears to have been a "gut reaction" to the financial disaster that would have resulted from the affirmance of Judge Dahl's decision.

It is a matter of public record that real estate and personal property taxes are the basis of the funding of the Illinois Public School system. It is estimated that to have upheld Judge Dahl's decision, the loss of revenue to the local units of government in the State of Illinois would have been approximately $300,000,000. It is a matter of public record that with all the revenue available, the public school system in the State of Illinois is teetering on the brink of financial disaster. This Petitioner submits that the financial disaster that may well have ensued

from an affirmance of Judge Dahl's decision was not sufficient reason for the Illinois Supreme Court to hold that to draw a distinction for purposes of taxation between individuals and corporations results in an invidious and unreasonable discrimination and to then go on and reimpose personal property taxes on individuals and corporations.

As Justice Davis stated in his dissent:

> "The Supreme Court in *Lawrence* (*Lawrence* v. *State Tax Commission of Miss.*, 286 U.S. 276, 284, 285; 52 S. Ct. 556, 559; 79 L. Ed. 1102, 1108) also stated that there is no constitutional requirement that a system of taxation should be uniform as applied to individuals and corporations, regardless of the circumstances in which it operates, (286 U.S. 276, 283, 52 S. Ct. 556, 558, 76 L. Ed. 1107), and we have just recently held that for the purpose of income taxation, corporations may be placed in one class and individuals in another and each taxed differently. (*Thorpe* v. *Mahin*, 43 Ill. 2d 36.) The language of the court at pages 45 and 46 is worthy of repetition:
>
> > 'It is next contended that the Act violates the uniformity provision of section 1 of article IX of our constitution and the equal-protection and due-process requirements of the fourteenth amendment to the United States constitution by creating multiple classes and discriminating unreasonably among them. This contention is advanced specifically against the provisions which tax corporations at a 4% rate and individuals, trusts, and estates at 2½% rate.
> >
> > 'Both the equal-protection argument and the uniformity argument depend on the reasonableness of putting corporations in one class and individuals, trusts, and estates in another class for purposes of this tax. (See *Grenier & Co.* v. *Stevenson*, 42 Ill. 2d 289). When the due-process contention has been

advanced, this court, citing Supreme Court cases, has stated: 'It has long been settled that the power of the legislature to make classifications, particularly in the field of taxation, is very broad, and that the fourteenth amendment imposes no "iron rule" of equal taxation. (Citations.) The reasons justifying the classification, moreover, need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it. (Citations.) The burden therefore rests on one who assails the statute to negate the existence of such facts. (Citations.)' *Department of Revenue* v. *Warren Petroleum Corp.*, 2 Ill. 2d 483, 489-490.

'When the uniformity contention has been advanced this court has stated: 'It is well established that the legislature has broad powers to establish reasonable classifications in defining subjects of taxation. * * * Such classification must, however, be based on real and substantial differences between persons taxed and those not taxed. (Citations.)' (*Klein* v. *Hulman*, 34 Ill. 2d 343, 346-347.) 'In order to prevail on an allegation that a statute or portion of a statute is unconstitutional, the plaintiff has the burden of showing how the legislature has violated the constitution.' *Grenier & Co.* v. *Stevenson*, 42 Ill. 2d 289, 291.'

'In short, petitioners have the burden of showing that the challenged classification is unreasonable. Their only assertion is that 'corporations are at a disadvantage when they compete in the same type of business with individual proprietorships or partnerships because of the rate differential.' This assertion has been rejected by the Supreme Court as to a Federal tax (*Flint* v. *Stone Tracy Co.*, 220 U.S. 107, 31 S. Ct. 342, 55 L. Ed. 389), and as to a State tax (*Fort Smith Lumber Co.* v. *Arkansas ex rel. Arbuckle*, 251 U.S. 532, 40 S. Ct. 304, 64 L. Ed. 396), and by this court (*People* v. *Franklin National*

Insurance Co. of New York, 343 Ill. 336; *Michigan Millers Mutual Fire Insurance Co.* v. *McDonough*, 358 Ill. 575), where, for purposes of the tax in question, corporations were placed in one class and individuals in another and each were taxed differently.'

"The majority, however, holds that as to a property tax the classification for exemption or taxation may not be based upon the character of the ownership, but only upon the nature of the property itself. Thus, the majority is of the opinion that the classification may not be based upon the corporation—individual distinctions which we upheld in *Thorpe*." (App. A 18-20)

In view of the fact that at the November 3, 1970 general election the voters of this State adopted Article IX-A as an amendment to the Constitution of the State of Illinois of 1870 by an overwhelming majority, Petitioner wonders how many of the Illinois Supreme Court Justices themselves voted "Yes" in November of 1970 and "No" the following July.

For many years prior to the effective date of the Illinois Constitution of 1970, the legislature of this state has struggled to fashion a system of taxation that would meet the strains and stresses created as this state shifted from a rural agricultural state to a highly industrialized and commercial state. The framework within which the legislature had to work in the field of revenue was the Revenue Article of the Constitution of 1870. During the years many attempts had been made to release the legislature from the stringent requirements imposed by Article IX of the Constitution of 1870.

The public, which resisted any change or relaxation of the stringent requirements, feared not a difference in the treatment for individuals as against corporations in the

assessment and collection of personal property taxation, for it well knew that in practice the personal property taxes were not being assessed on an equal basis either as between the urban individuals as against the suburban and rural individuals, or as against all individuals vs. corporations.

In *Bachrach, et al.* v. *Nelson, et al.*, 349 Ill. 579, 182 N.E. 909 (1932), the Court considered the Income Tax Act that had been passed by the legislature in 1932. The plaintiffs had asserted that the Act was unconstitutional on several bases. The Court, at 349 Ill. 582, stated:

> "It is admitted by the Attorney General, in behalf of appellants, that if any one of three fundamental objections raised by appellees against the constitutionality of the present law is sound, then no satisfactory income tax legislation can be passed under our present conditions."

The Court then went on to find the tax unconstitutional under Article IX of the Constitution of 1870.

The belief on the part of the public that no income tax in Illinois would meet the constitutional standards, was shattered when the Illinois Supreme Court rendered its decision in the *Thorpe* case, *supra*, finding that not only was the income tax constitutional, but that the tax could be imposed at different rates upon individuals as against corporations.

With the income tax held valid, the legislature and electorate proceeded to try and untangle the inequities that existed under the personal property tax. The Illinois Supreme Court had consistently recognized the inequities that were inherent in the Illinois tax laws and the impossibility of fairly administering such laws, and had recognized that those problems would not readily lend themselves to judicial solution.

It seems incongruous that after years of recognizing that the uniformity provision of Article IX was, in all probability, an ideal beyond attainment; having recognized that the laws were being improperly administered; the Court still refused to take action. In *People ex rel. Hamer* v. *Jones,* 39 Ill. 2d 360, 367, 372; 235 N.E. 2d 589 (1968), the Court stated:

> "This assessment and valuation of taxable property thereunder has created vexatious problems and serious difficulties. Although the law has directed full value assessment, *de facto* debasement has occurred. In 1940, it was noted in *Mobile and Ohio Railroad Co.* v. *State Tax Commission,* 374 Ill. 75 when, on page 76 thereof, the court said: "By virtue of a recognized custom, property, generally, throughout the State of Illinois is now, and for many years last past has been, assessed for taxation at a figure less than its full cash value and this custom has long been recognized by the State Tax Commission." It was conceded that the enforcement of the uniformity requirements of the constitution was an old and continuing problem in the court and with the legislature, and that it could not be truthfully said that either branch of government had ever yet arrived at a satisfactory solution. The court reasoned that the ideal might be beyond attainment through available human agencies, but that the quest could not be abandoned either by the legislature or the judicial branch of government. It concluded with the statement that "The problem is administrative rather than legislative or judicial, and the administrative difficulties have so far proved insurmountable insofar as any exact attainment of the desired end is concerned." 374 Ill. at 83."
>
> • • •
>
> "Despite this holding, however, we feel compelled to disclose our awareness of the fact that problems of property tax are a constant source of legislation and where they have been insurmountable the method has

been supplemented or abandoned. While it has been pointed out that the complaint here is insufficient, it is a matter of common knowledge, that the property tax, as administered, has lost considerable face. It is far from a perfect, or even satisfactory, solution to the problem of providing revenue on an equitable basis. The property tax method was devised long before the present day complexities of urban living and the increased demands made upon government. The intricacies of the problem do not readily lend themselves to judicial solution.

"In this latter regard, we stated in *Hall* v. *Gillins*, 13 Ill. 2d 26, at page 32, 147 N.E. 2d 352, at page 355: 'The point of greatest concern has been the subject of frequent legislative attention. Further legislative action appears likely, and the likelihood of legislative action has always militated against judicial change.' But, while we may defer to legislative action for a time, we cannot abdicate our responsibilities even though *our approach must necessarily be a negative one* and chaos may ensue." 39 Ill. 2d 360 at 372. (Emphasis added.)

It is submitted that the legislature and the electorate in approving Article IX-A as an amendment to the Illinois Constitution of 1870 sought to free the legislature from the strait-jacket of uniformity. Why, then, does the Court now reimpose the strait-jacket?

It is respectfully suggested that in the instant proceeding, the Supreme Court recognized that to affirm the decision of Judge Dahl would have created a chaotic situation. The majority decision of the court, however, appears to ignore that the amendment to the Constitution of 1870, designated as Article IX-A, was designed to remove the stringent requirements of uniformity that the prior Revenue Article contained. The Court, by its decision in the instant case, thwarts the intent of the legislature and the

will of the electorate by resolving this difficult and vexatious issue by judicial solution. Apparently, as Justice Davis pointed out in his dissent, the Court ignored the rationale of its decision in the *Thorpe* case.

As this Petitioner has suggested, the basic reasoning and rationale adopted by the Supreme Court in the majority decision is substantially indistinguishable from the rationale relied upon by Judge Dahl in the *Lake Shore* case. The only substantial difference in the two decisions is the result reached. Both hold that to impose the burden of *ad valorem* personal property taxes on property owned by "A," and remove it from property owned by "B" is unconstitutional. Neither court recognized that the Supreme Court in *Thorpe* v. *Mahin, supra,* had reasoned that sufficient differences inhered in corporations as opposed to individuals to justify different income tax rates.

To this point this Petitioner has concentrated on the infirmities inherent in the decision of Judge Dahl and the decision of a majority of the Illinois Supreme Court, and has not pointed out the reasonableness of the decision of Judge Donovan in the third of the consolidated cases (Appendix A33-40).

Concededly, Judge Donovan found there was a discrimination between individuals and the personal property that they used solely for their personal enjoyment and that of their families, and that of all other personal property whether owned by individuals or corporations, for the purpose of engaging in business and acquiring profits.

As a reasonable man, Judge Donovan found *that* to be a reasonable discrimination. Only unreasonable discriminations, those that are invidious, are unconstitutional. *Metropolis Theater Co.* v. *Chicago,* 246 Ill. 20, aff'd. 228 U.S. 61 (1913); *Doolin* v. *Korshak,* 39 Ill. 2d 521; 236 N.E. 2d 897 (1968).

This Petitioner respectfully submits that either the dissenting opinion of Justice Davis was correct, or that the decision of Judge Donovan in the *Shapiro* case was correct.

CONCLUSION

It is incumbent upon this Court to grant the petition prayed for and to reverse the decision of the majority of the Illinois Supreme Court, a decision that may well breed a taxpayers' revolt of catastrophic proportions that conceivably could bring the State of Illinois to disaster. Petitioner submits that this Court should take judicial notice that because of the burgeoning rate of the cost of local government, as well as the cost of federal government, that this Union may not celebrate its bicentennial.

For the reason stated above, this defendant respectfully prays that this Court grant the writ herein prayed for.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North La Salle Street, Room 900,
Chicago, Illinois 60601,
793-3500 A/C 312,
Attorney for Petitioner.

FRANCIS T. CROWE,
CALVIN C. CAMPBELL,
Assistant Attorneys General,
130 North Wells Street, Room 1700,
Chicago, Illinois 60601,
793-2527 A/C 312
Of Counsel.

APPENDIX "A"

LAKE SHORE AUTO PARTS CO., an Illinois Corporation, et al.,
Appellees,

v.

BERNARD J. KORZEN, County Treasurer and ex officio County Collector of Cook County, et al.,
Appellants.

EUGENE L. MAYNARD, et al.,
Plaintiffs,

v.

EDWARD J. BARRETT, County Clerk of Cook County, et al.,
Defendants.

CLEMENS K. SHAPIRO, et al.,
Appellants,

v.

EDWARD J. BARRETT, County Clerk of Cook County, et al.,
Appellees.

Nos. 44199, 44308, 44432 Cons.

Mr. JUSTICE SCHAEFER delivered the opinion of the court.

These consolidated cases present issues concerning the construction and the validity of Article IX-A which was added to the Constitution of 1870 by referendum vote at the November 1970 election. On June 30, 1969, the Senate and the House of Representatives concurred in the

adoption of Senate Joint Resolution No. 30, which provided for the submission of the proposed amendment to a referendum vote. Senate Joint Resolution No. 30 (Senate Journal, June 30, 1969, p. 3476) is as follows:

SENATE JOINT RESOLUTION NO. 30

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX-A to the Constitution, the added Article to read as follows:

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals.*

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971.

The explanation of the amendment which appeared upon the referendum ballot is as follows:

"The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870, Article IX-A, thus setting aside existing provisions in Article IX, Section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations."

Subsequently, on May 19, 1970, the Senate adopted Senate Joint Resolution No. 67 (Senate Journal May 19, 1970,

p. 6) which contained a further statement of the intention of the General Assembly in adopting Senate Joint Resolution No. 30. Senate Joint Resolution No. 67 was concurred in by the House of Representatives on May 29, 1970 (Senate Journal May 29, 1970, p. 149). It reads as follows:

Senate Joint Resolution No. 67

RESOLVED, BY THE SENATE OF THE SEVENTY-SIXTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that, in adopting Senate Joint Resolution No. 30, which submits to the electors of this State a constitutional amendment prohibiting the taxation of personal property by valuation as to individuals, it was the intention of this General Assembly to abolish the ad valorem taxation of personal property owned by a natural person or by two or more natural persons, and that, by the use of the phrase "as to individuals", this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common.

The first of the three consolidated actions that are before us was filed by Lake Shore Auto Parts Co., a corporation, on December 9, 1970. The complaint named as defendants the county clerk of Cook County, the county assessor, the county collector and the members of the board of appeals of that county, as well as the director of the Department of Local Government Affairs of the State. It alleged that it was filed as a class action on behalf of the plaintiff (hereafter Lake Shore) and on behalf of all other corporations and other "non-individuals" subject to personal property tax. It asserted that the new Article IX-A violates the fourteenth amendment to the Constitution of the United States because its effect "is to

exonerate from ad valorem personal property taxation, on and after January 1, 1971, all personal property owned by 'individuals', while authorizing and requiring the continued ad valorem taxation of all personal property owned by entities other than 'individuals.' " It also alleged that the provisions of Article IX-A immediately became a part of and amended the Revenue Act of 1939, so that that statute "imposes ad valorem taxes only with respect to personal property owned by corporations and other entities which are not 'individuals' within the meaning of said Article IX-A." The complaint prayed for a decree "finding and declaring that the provisions of the Revenue Act of 1939 * * *, as amended by Article IX-A of the Constitution of Illinois, are unconstitutional, invalid and unenforceable insofar and to the extent that such statute purports to impose ad valorem taxes with respect to personal property owned by plaintiff and all corporations and other 'non-individuals' who are members of the class which plaintiff represents." An injunction, as well as relief appropriate to a class action, was also sought.

The answers of the defendants denied the legal conclusions asserted by the plaintiff. They did not admit the allegations that related to the representative character of the action, but they did not dispute any allegations of fact that related to the basic issues.

All parties moved for summary judgment, and the trial court entered an order on March 30, 1971, granting the basic relief prayed for in the complaint, but reserving jurisdiction to determine the class aspect of the action. The order also found that Article IX-A is not applicable to personal property taxes, the assessment of which was commenced prior to January 1, 1971. The defendant, Robert J. Lehnhausen, Director of the Department of Local

Government Affairs of the State of Illinois, has appealed, and the plaintiff has cross appealed from that portion of the order that related to the particular taxes to which the court's order was applicable.

A petition seeking leave to file an original action in this court was filed on May 10, 1971 on behalf of Eugene L. Maynard, "a natural person, citizen and taxpayer of the State of Illinois," and also on behalf of one high school district and three grade school districts. Leave to file was granted on May 12, 1971. The defendants are those state and county officers who are defendants in the Lake Shore case. The complaint, which sought a declaratory judgment and other relief, alleges the adoption of Article IX-A. It is suggested that "the *Lake Shore* case will come to the Court in a flawed condition in that it will not properly present the parties and arguments essential for a full determination of the important revenue question. * * * Without the presence of Eugene L. Maynard, neither the presence nor the position of a natural person will be adequately presented to this Court." The complaint alleged that it was filed by Maynard, who is alleged to own nonbusiness personal property, on behalf of himself and all others similarly situated. It also alleged that it was filed on behalf of the named public bodies for themselves and all other public bodies which receive proceeds from personal property taxation.

The deficiencies in parties and in legal arguments in the *Lake Shore* case is said to lie in the fact that the only plaintiff in that case is a corporation, and in the fact that the complaint in that case does not contain a direct request for a declaration of the unconstitutionality of Article IX-A. "The pleadings of that case place into question only certain sections of the Illinois Revenue Act. The

attack is made upon these sections as affected by the passage of Article IX-A rather than upon the constitutionality of the Article itself. * * * If the Court considers the *Lake Shore* case without additional parties and arguments, it may be foreclosed from ruling on the central issue of constitutionality of the Amendment."

No new facts were alleged in the Maynard case, and the defendant Lehnhausen has conceded the factual questions and filed a brief to stand as its answer in this case. The brief on behalf of the defendant county officers appears similarly to have been intended to stand as a motion to dismiss the complaint.

Another action was instituted by a complaint for declaratory judgment which was filed in the circuit court of Cook County on May 8, 1971, on behalf of several plaintiffs. Clemens K. Shapiro alleged that he is a natural person who owns personal property in his own name and real property jointly with his wife, none of which property is owned or used for purposes of business, and all of which property is owned and used for his personal enjoyment and that of his family. Jerome Herman alleged that he is a natural person and operates and conducts a business as a sole proprietor. Guy S. Ross and Eugene D. Ross allege that they are natural persons and operate, as a partnership, a business which owns property. M. Weil and Sons, Inc., a corporation, alleges that it is the owner of property situated in Cook County.

The complaint alleges that each of the plaintiffs is acting in a representative capacity on behalf of all others similarly situated. The defendants are those state and county officers who were named in the Lake Shore complaint. The complaint alleges the adoption of Article IX-A and asserts various interpretations of that Article, some of which are

advanced by all of the plaintiffs and others by one or another of the plaintiffs. To this complaint the defendant Lehnhausen, Director of the Department of Local Government Affairs, filed a motion to dismiss on May 9, 1971. He also filed a "Petition for Instructions" which recited that the Lake Shore and Maynard cases were pending in the Supreme Court of Illinois, asserted that the issues in all of the three cases were substantially the same, and that it "would appear to be a duplication of effort for this Court to consider the issues involved in the case at bar [the Shapiro case] while at the same time the Illinois Supreme Court has essentially the same issues before it for consideration." The petition for instructions suggested that the Shapiro case be held in abeyance for the determination of the cases already pending before the Supreme Court. No order was entered with respect to this petition. On May 19, 1971, a motion to strike was filed in behalf of the defendant county officers. On May 28, 1971, an order was entered, by a judge other than the judge who heard the Lake Shore case, finding that the action was properly maintained as a class action and that each plaintiff had standing to bring the action in its own behalf and was a proper representative of the class he purported to represent. The order found that Article IX-A "is free of the ambiguity and uncertainty of intendment charged by the plaintiffs, and that its intendment is clearly declared to prohibit the taxation of personal property by valuation exclusively as to natural persons, where that property is used, by them, for the personal enjoyment of themselves and their families." Except as to the plaintiff Clemens K. Shapiro and members of his class, the complaint was dismissed. All of the plaintiffs in the Shapiro case have appealed from this judgment.

The plaintiffs in the Maynard and Shapiro cases justify the institution of their actions upon the ground that there are deficiencies as to parties and as to legal propositions in the Lake Shore case which might, without the assistance which they volunteer to supply, preclude the possibility of full consideration of the issues by this court. That it is not necessary that each person or group of persons favorably or unfavorably affected by a legislative classification be made parties to an action challenging the validity of that classification is apparent. Major cases involving discrimination of the sort here alleged have not required the presence, as parties, either in person or by representative, of all those affected. See, *e.g.*, *Lawrence* v. *State Tax Com. of Miss.* (1932), 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102.

There are no factual issues in the present cases, and the order of this court which consolidated the Lake Shore and Maynard cases provided: "Counsel may brief and argue all issues as to the validity and effect of the constitutional amendment known as Article IX-A of the Constitution of 1870." (See *Hux* v. *Raben* (1967), 38 Ill. 2d 223.) Additional class actions were not necessary to place before the court all pertinent legal theories. We shall, however, consider the arguments advanced by counsel in those cases.

Neither the plaintiffs in the Maynard case nor those in the Shapiro case are content with the interpretation of Article IX-A arrived at by Judge Walter P. Dahl in the Lake Shore case. That interpretation was that the new Article "purports to prohibit the taxation of personal property by valuation as to 'individuals', and only as to 'individuals,' while leaving unaffected those provisions of the Illinois Constitution and the Revenue Act of Illinois * * * which imposed such personal property taxes as to

property owned by corporations and other 'non-individuals.'"

One alternative construction, advanced by the plaintiffs in the Shapiro case, is that the "Illinois' Constitution of 1870, as amended by the addition of Article IX-A, specifically prohibits, and declares to be unconstitutional the imposition in Illinois of the property taxes imposed by Article IX, Section 1, on all forms of property, real and personal or other, regardless of the ownership of that property or the use to which that property is put by its owner." This construction is achieved by disregarding the fact that Article IX-A is clearly concerned only with the taxation of personal property, and by concentrating upon the fact that the last sentence in the official explanation which appeared upon the ballot at the election on November 3, 1970, when Article IX-A was approved, mentioned taxes upon both real and personal property. That explanation was as follows:

> "The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870, Article IX-A, thus setting aside existing provisions of Article IX, Section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations."

The last sentence of the explanation, however, is not a part of the amendment, and its reference to real property taxes was made in describing the existing provisions of Article IX, Section 1, which are modified by Article IX-A.

Based upon the circumstance that the phrase "as to individuals" is printed in italics in Article IX-A, the May-

nard plaintiffs turn to materials other than the legislative explanations in a search for a technical meaning. They say: "The unusual circumstance that the words 'as to individuals' are italicized in the constitutional amendment, an unprecedented practice in constitutional drafting, strongly suggests that the General Assembly, in drafting Senate Joint Resolution No. 30 used the word 'individuals' as one having established technical significance and usage in the classification of taxpayers upon whom personal property taxes have been imposed."

They purport to find the technical meaning that they seek in the circumstance that two different forms, administratively prescribed, have been used for personal property tax returns. One form is to be used by "individuals, partnerships, and unincorporated associations owning or controlling personal property used in agriculture, and all individuals owning or controlling any personal property which is not owned or used in connection with any business (other than agriculture) * * *." The other form is to be used by "[p]roprietorships, partnerships and unincorporated associates engaged in business (other than agriculture) * * *." On the assumption that the word "individuals" was intended to have an established technical meaning because it was printed in italics, the Maynard plaintiffs, and the Shapiro plaintiffs as well, argue that the word "individuals" was used to denote a class of natural persons owning personal property not used in business.

There is, however, a more prosaic explanation for the fact that the words "as to individuals" are printed in italics. When Senate Joint Resolution No. 30 was originally introduced on April 29, 1969, the proposed Article IX-A read as follows: "Notwithstanding any other provision of

this Constitution, the taxation of personal property by valuation is prohibited." (Senate Journal, April 29, 1969, p. 1038.) On May 15, 1969, Senate Joint Resolution No. 30 was amended "by striking the period and adding the following: 'as to individuals.' " Senate Journal, May 15, 1969, pp. 1407-8.

The added words were placed in italics in accordance with routine legislative practice, which contemplates that in the case of amendments, new material is to be italicized. The rules of the Senate of the 76th General Assembly provided: "All resolutions originated in the Senate proposing amendments to the Constitution shall be ordered printed and shall be printed in the same manner in which bills are printed." (Senate Journal, Feb. 18, 1969, p. 163.) And as to bills, they provided: "Senate Bills and House Bills in the Senate shall be printed with new matter in italics and omitted or superseded matter enclosed in brackets and underlined." Senate Journal, Feb. 18, 1969, p. 161.

There is thus no underpinning for the argument that the General Assembly intended that the word "individuals" should be given an artificial meaning. The official explanations, which are not discussed in the Maynard brief, definitely negative such an intention. We have examined the other materials to which the Maynard and Shapiro plaintiffs have referred, but have found nothing which persuades us that the words of Article IX-A should be given anything other than their natural meaning.

We conclude that the meaning of Article IX-A is that ad valorem taxation of personal property owned by a natural person or by two or more natural persons as joint tenants or tenants in common is prohibited.

The Maynard case plaintiffs and all of the Shapiro case plaintiffs, with the exception of Shapiro, contend that Ar-

ticle IX-A, so construed, violates the equal protection clause of the fourteenth amendment to the constitution of the United States. Lake Shore contends that it is the Revenue Act, which must be regarded as amended by Article IX-A, rather than the Article itself, which violates the equal protection clause. We shall first consider the basic question of the validity of the discrimination effected by Article IX-A.

The new Article classifies personal property for the purpose of imposing a property tax by valuation, upon a basis that does not depend upon any of the characteristics of the property that is taxed, or upon the use to which it is put, but solely upon the ownership of the property. If the property is owned by A, it is taxable; if it is owned by B, it cannot be taxed. Of course, the equal protection clause of the fourteenth amendment does not prohibit classification, and absolute precision is not required of the states in drawing the lines between classes. Nevertheless, a state may not, under the guise of classification, arbitrarily discriminate against one and in favor of another similarly situated.

The Supreme Court of the United States has thus described the governing principles:

> "Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. *Bell's Gap R. Co.* v. *Pennsylvania,* 134 U.S. 232, 237;

Magoun v. *Illinois Trust & Savings Bank,* 170 U.S. 283, 293; * * * *State Board of Tax Comm'rs of Indiana* v. *Jackson,* 283 U.S. 527, 537. 'To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure.' *Ohio Oil Co.* v. *Conway,* supra, 281 U.S., at 159.

"But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of legislation.' *Royster Guano Co.* v. *Virginia,* 253 U.S. 415; *Louisville Gas & Electric Co.* v. *Coleman,* 277 U.S. 37; *Air-Way Electric Appliance Corp.* v. *Day,* 266 U.S. 71, 85; *Schlesinger* v. *Wisconsin,* 270 U.S. 230, 240; *Ohio Oil Co.* v. *Conway,* 281 U.S. 146, 160 * * *."

Allied Stores of Ohio, Inc. v. *Bowers,* (1959), 358 U.S. 522, 526-27, 79 S. Ct. 437, 3 L. Ed. 2d 480, 484-85.

When classifications are reasonable, it is because of differences in the nature of the property or in the use to which it is put. The nature of the tax is important, too, for what may be a reasonable classification for a license, or for a privilege tax, is not necessarily a reasonable classification for a property tax.

Mr. Justice Brandeis stated the criterion this way in his dissenting opinion in *Quaker City Cab Co.* v. *Pennsylvania,* 277 U.S. 389, 406, 48 S. Ct. 553, 72 L. 7d. 927, 932: "In other words, the equality clause requires merely that the classification shall be reasonable. We call that action reasonable which an informed, intelligent, just-minded, civ-

ilized man could rationally favor. In passing upon legislation assailed under the equality clause we have declared that the classification must rest upon a difference which is real, as distinguished from one which is seeming, specious, or fanciful, so that all actually situated similarly will be treated alike; that the object of the classification must be the accomplishment of a purpose or the promotion of a policy, which is within the permissible functions of the State; and that the difference must bear a relation to the object of the legislation which is substantial, as distinguished from one which is speculative, remote or negligible."

Article IX-A must be read against the scheme of property taxation established pursuant to Article IX of the Constitution of 1870, which, with respect to property taxes contemplates the levy of "a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property * * *." (Constitution of 1870, Article IX, Sec. 1.) Taxes levied by municipal corporations are required to be "uniform in respect to persons and property, within the jurisdiction of the body imposing the same." (Constitution of 1870, Article IX, Sec. 9.) The permissible exemptions from taxation are thus described. "The property of the state, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. * * *" Constitution of 1870, Article IX, Sec. 3.

Against this background the incongruity of the prohibition contained in Article IX-A is apparent. It cannot rationally be said that the prohibition promotes any policy

other than a desire to free one set of property owners from the burden of a tax imposed upon another set. All of the arguments in favor of the abolition of the personal property tax upon the property owned by natural persons apply with equal force in favor of the abolition of that tax upon the property owned by others. For the purpose of a tax by valuation upon the ownership of real or personal property, the identity of the owner is a neutral consideration, as is his status as sole proprietor, joint tenant, tenant in common, partner (Ill. Rev. Stat. 1969, ch. 106½, par. 25), limited partnership (Ill. Rev. Stat. 1969, ch. 106½, par. 61), member of a professional service corporation (Ill. Rev. Stat. 1969, ch. 32, par. 415-1 *et seq.*), or of a professional association (Ill. Rev. Stat. 1969, ch. 106½, par. 101 *et seq.*; see Sup. Ct. Rule 721; 43 Ill. 2d, Rule 721).

We hold, therefore, that the discrimination produced by Article IX-A violates the equal protection clause of the fourteenth amendment. Apart from that discrimination, the validity of the Revenue Act is not challenged, and we hold that it is Article IX-A which must fall. The validity of Article IX of the Constitution and of the Revenue Act are therefore not affected.

The judgment of the circuit court of Cook County in No. 44199 (Lake Shore) is reversed, and the cause is remanded to that court with directions to dismiss the complaint. Insofar as the judgment of the circuit court in No. 44432 (Shapiro) dismissed the complaint as to all of the plaintiffs other than Clemens K. Shapiro, it is affirmed; insofar as that judgment sustained the complaint as to Clemens K. Shapiro, it is reversed and the cause is remanded to that court with directions to dismiss the complaint. In No. 44308 (Maynard), the complaint is dismissed.

No. 44199. *Reversed and remanded with directions.*

No. 44432. *Affirmed in part; reversed in part, and remanded with directions.*

No. 44308. *Complaint dismissed.*

(Lake Shore Auto Parts Co. v. Korzen, Nos. 44199, 44308, 44432)

MR. JUSTICE DAVIS, dissenting:

The majority opinion holds that our State Constitution of 1870, as modified by Article IX-A, may not validly classify exemptions from ad valorem personal property taxation on the basis of the ownership of the property, and that such exemption may be made only upon a classification based upon the nature of the property or its use. I dissent from this pronouncement.

It is clear that the United States Constitution imposes no particular modes of taxation upon the states and leaves them unrestricted in their power to tax those domiciled within their borders so long as the tax imposed is upon property within the state, or on privileges enjoyed there, and so long as the tax is not so palpably arbitrary or unreasonable as to infringe upon the equal protection and due process requirements of the fourteenth amendment. *Lawrence* v. *State Tax Commission of Mississippi*, 286 U.S. 276, 284, 52 S. Ct. 556, 559, 76 L. Ed. 1102, 1105.

The majority opinion recognizes that "the equal protection clause of the fourteenth amendment does not prohibit classification, and absolute precision is not required of the states in drawing the line between classes"; and that, "nevertheless, a state may not, under the guise of classification, arbitrarily discriminate against one and in favor of another similarly situated." This general rule is found in the quotation from *Allied Stores of Ohio* v. *Bow-*

ers, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480, cited by the majority. The rule has been expressed and exemplified many times in varying terms. Examples are: "Any classification of taxation is permissible which has reasonable relation to a legitimate end of governmental action." (*Welch* v. *Henry,* 305 U.S. 134, 144, 59 S. Ct. 121, 124, 83 L. Ed. 87, 92); "It is a salutary principle of judicial decision, * * * that the burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators. A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it." (*Metropolitan Casualty Inc. Co.* v. *Brownell,* 294 U.S. 580, 584, 55 S. Ct. 538, 540, 79 L. ed. 1071, 1073.) Due process imposes no rigid rule of equality in taxation, and irregularities resulting from singling out one particular class for taxation or exemption infringe no constitutional requirement. (*Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495, 509, 57 S. Ct. 868, 872, 81 L. ed. 1245, 1253). It is only the invidious discrimination or classification which is patently arbitrary and utterly lacking in rational justification which is barred by the due process or equal protection clauses. *Flemming* v. *Nestor,* 363 U.S. 603, 611, 612, 80 S. Ct. 1367, ——4 L. ed. 2d 1435, 1445.

The variety of ways of expressing the rule that a legislative classification for taxation purposes is not violative of the fourteenth amendment if it has a reasonable relation to the subject of the particular legislation so that all

persons similarly situated are treated alike, and pertinent citations, are found in 16A C.J.S. Constitutional Law, Sections 520, 521, 649.

In this litigation, as is often the case, the particular expression of the rule which the majority of the court chooses to rely upon may be dictated by the outcome which the judges of the majority think to be proper. Beyond doubt, the fourteenth amendment does not impose on the states an inflexible and technical rule of equal taxation, and the extent to which the states may go in devising a legislative classification for taxation is illustrated by the statement of the Supreme Court in *Lawrence* v. *State Tax Commission of Mississippi,* 286 U.S. 276, 284, 285, 52 S. Ct. 556, 559, 76 L. ed. 1102, 1108:

> "The equal protection clause does not require the state to maintain a rigid rule of equal taxation, to resort to close distinctions, or to maintain a precise scientific uniformity; and possible differences in tax burdens not shown to be substantial or which are based on discriminations not shown to be arbitrary or capricious, do not fall within constitutional prohibitions."

The Supreme Court in *Lawrence* also stated that there is no constitutional requirement that a system of taxation should be uniform as applied to individuals and corporations, regardless of the circumstances in which it operates (286 U.S. 276, 283, 52 S. Ct. 556, 558, 76 L. ed. 1107), and we have just recently held that for the purpose of income taxation, corporations may be placed in one class and individuals in another and each taxed differently. (*Thorpe* v. *Mahin,* 43 Ill. 2d 36.) The language of the court at pages 45 and 46 is worthy of repetition:

> "It is next contended that the Act violates the uniformity provision of Section 1 of Article IX of our constitution and the equal protection and due process

requirements of the fourteenth amendment to the United States constitution by creating multiple classes and discriminating unreasonably among them. This contention is advanced specifically against the provisions which tax corporations at a 4% rate and individuals, trusts, and estates at 2½% rate.

"Both the equal protection argument and the uniformity argument depend on the reasonableness of putting corporations in one class and individuals, trusts, and estates in another class for purposes of this tax. (See *Grenier & Co.* v. *Stevenson,* 42 Ill. 2d 289). When the due process contention has been advanced, this court, citing Supreme Court cases, has stated: 'It has long been settled that the power of the legislature to make classifications, particularly in the field of taxation, is very broad, and that the fourteenth amendment imposes no "iron rule" of equal taxation. (Citations.) The reasons justifying the classification, moreover, need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it. (Citations.) The burden therefore rests on one who assails the statute to negate the existence of such facts. (Citations.)' *Department of Revenue* v. *Warren Petroleum Corp.,* 2 Ill. 2d 483, 489-490.

"When the uniformity contention has been advanced this court has stated: 'It is well established that the legislature has broad powers to establish reasonable classifications in defining subjects of taxation. • • • Such classification must, however, be based on real and substantial differences between persons taxed and those not taxed. (Citations.)' (*Klein* v. *Hulman,* 34 Ill. 2d 343, 346-347.) 'In order to prevail on an allegation that a statute or portion of a statute is unconstitutional, the plaintiff has the burden of showing how the legislature has violated the constitution.' *Grenier & Co.* v. *Stevenson,* 42 Ill. 2d 289, 291.

"In short, petitioners have the burden of showing that the challenged classification is unreasonable. Their

only assertion is that 'corporations are at a disadvantage when they compete in the same type of business with individual proprietorships or partnerships because of the rate differential.' This assertion has been rejected by the Supreme Court as to a Federal tax (*Flint* v. *Stone Tracy Co.*, 220 U.S. 107, 31 S. Ct. 342, 55 L. Ed. 389), and as to a State tax (*Fort Smith Lumber Co.* v. *Arkansas ex rel. Arbuckle*, 251 U.S. 532, 40 S. Ct. 304, 64 L. Ed. 396), and by this court (*People v. Franklin National Insurance Co. of New York*, 343 Ill. 336; *Michigan Millers Mutual Fire Insurance Co.* v. *McDonough*, 358 Ill. 575), where, for purposes of the tax in question, corporations were placed in one class and individuals in another and each were taxed differently."

The majority, however, holds that as to a property tax the classification for exemption or taxation may not be based upon the character of the ownership, but only upon the nature of the property itself. Thus, the majority is of the opinion that the classification may not be based upon the corporation — individual distinctions which we upheld in *Thorpe*.

In *Thorpe* this court reversed its prior holding that income is property (*Bachrach* v. *Nelson*, 349 Ill. 579), and held that an income tax was not a property tax. The significance of this determination was that Section 1 of Article IX of our Constitution of 1870 required the levying of a tax "by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property * * *." At the same time, the constitutional provisions permitted a tax upon franchises and privileges in such manner as the legislature might direct, so long as it was uniform as to each "class." Obviously, the legislature could not, under the foregoing provisions, impose

an income tax upon corporations at one rate and upon individuals at a lesser rate if it were a tax on property. Our constitution then prohibited any tax on property unless structured to be uniform as to valuation.

After reaching the conclusion that an income tax was not a property tax, the court faced no barrier in upholding the Illinois Income Tax Act. In the case at bar, after Article IX-A amendment to the Constitution of 1870 was adopted, the uniformity provisions of Section 1 of Article IX were no longer effective as to the taxation of personal property of individuals, and the court should have found no impediment to upholding the validity of Article IX-A and the abolishment of this tax as to individuals.

Constitutional provisions requiring property to be taxed uniformly in proportion to its value are not uncommon to the states. In the California Railroad Tax cases (*San Mateo County* v. *Southern Pacific R. Co.*, 13 Fed. 722, appeal dismissed per stipulation, 116 U.S. 138; *Santa Clara County* v. *Southern Pacific R. Co.*, 18 Fed. 385, aff'd other grounds, 118 U.S. 394), which held that unequal taxation, based upon the character of the owner, was forbidden by the fourteenth amendment, a constitutional provision requiring uniformity of taxation was involved. Even though the California constitution specified that all property be taxed in proportion to its value, a state statute especially provided that as to railroad properties only, the amount of a mortgage on the real estate was not to be deducted in ascertaining the value of the real estate for taxation purposes. The trial court quite properly held that this method of valuation, as to railroads only, was improper under the circumstances, and the United States Supreme Court affirmed the lower court on a non-constitutional basis without reaching the constitutional question. The California

Railroad Tax cases should be read, with cognizance, that the state constitution required all property to be taxed in proportion to its value, and that the cases arose at a time when it was necessary to establish that the word, "persons" as used in the fourteenth amendment, included corporations. Apparently, the latter point had a strong bearing on the expressions found in these cases.

In the case at bar, by virtue of the adoption of Article IX-A, there is no constitutional requirement that taxes on personal property be uniform as to individuals and corporations so that each pays a tax in proportion to the value of his or its property. Article IX-A, which we are called upon to consider, eliminated this requirement; it provides that "the taxation of personal property is prohibited as to individuals." Thus, the case at bar is a far cry from one in which the legislature is attempting to discriminate between individuals and corporations in the face of a constitutional provision prohibiting such discrimination. Here the question for determination is whether, absent the requirement of a state constitution that corporate and individual personal properties be taxed the same, the equal protection clause of the fourteenth amendment permits them to be taxed differently? I believe that it does!

Without the constitutional requirement of uniformity on the taxation of properties, there is no reason or justification in the case at bar for stating that personal property taxation may not be classified on the basis of the ownership of the property. The Constitution of 1870, as amended by Article IX-A, does not so provide, and the Constitution of 1970 suggests the contrary. Article IX of the Constitution of 1970 relates to revenue, and Section 5 thereof pertains to personal property taxation. Subsection (a) thereof provides that the legislature "may clas-

sify personal property for purpose of taxation by valuation, abolish such taxes on any or all *classes* and authorize the levy of taxes in lieu of the taxation of personal property by valuation." (Emphasis ours.) Without more, it could be said that the word "classes" refers only to classes of property, but subsection (c) refers to the abolition of all ad valorem personal property taxes by January 1, 1979, and the replacement of the lost revenue, and provides: "Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those *classes* relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971." (Emphasis ours.) Obviously, the word "classes" as there used, does not refer to classes of property; it refers to classes of property owners, and provides for taxation according to the character of the owner. If the majority opinion is to stand and Article IX-A held to be unconstitutional, then under consistent application of its rationale, subsection (a) of Section 5 of the new constitution is likewise unconstitutional.

The majority opinion chose to rely upon the rationale of *Quaker City Cab Co.* v. *Commonwealth of Pennsylvania,* 277 U.S. 389, 48 S. Ct. 553, 72 L. ed. 927. I believe that the elucidation and logic of the dissent of Mr. Justice Brandeis, in which Mr. Justice Holmes concurred, offers the better reason. Therein, Mr. Justice Brandeis made some observations which are particularly apropos here. The court had under consideration a tax on the gross receipts of corporate taxicab companies where no similar tax was imposed upon the receipts of individuals who operated taxicabs. The majority held that the classification was based solely upon the character of the owner, and that it violated the fourteenth amendment.

people and the legislature of the State. The General Assembly, which drafted and adopted Senate Joint Resolution No. 30, had previously at the same legislative session already exempted from such taxation, household furniture and one automobile, per household, used for personal pleasure. (Ill. Rev. Stat. 1969, ch. 120, par. 500.21a.) The Article IX-A amendment was overwhelmingly ratified by the people of the State. The Constitution of 1970, likewise adopted by the vote of the people, expressed their concern over the form and use of personal property taxation. The newly-adopted constitution prohibits the reinstatement of any ad valorem personal property tax abolished before July 1, 1971, the effective date of the new constitution. This provision refers to the personal property tax as to individuals which was abolished by Article IX-A, and the majority opinion runs counter to this constitutional prohibition in that it reinstates the personal property tax as to individuals. In addition, the new constitution provides that all ad valorem personal property taxes shall be abolished on or before January 1, 1979.

The obvious spirit of the Article IX-A amendment, the will of the people, as expressed by its adoption, and the intent and purpose of the legislature, should not be thwarted unless a construction to this effect is required. Thus, it is very appropriate that we consider the mischief sought to be remedied and the purpose to be accomplished by the Article IX-A amendment. (*Wolfson* v. *Avery*, 6 Ill. 2d 78, 88). Likewise, the court should memorialize the salutary rule of law that an amendment to a state constitution should be deemed violative of the Federal Constitution only where the asserted constitutional rights cannot otherwise be protected and effectuated. *Reynolds* v. *Sims*, 377 U.S. 533, 584, 84 S. Ct. 1362, ——, 12 L. ed. 2d 506, 540.

After considering the background of this constitutional amendment and the purpose which it, along with the other contemporary legislative enactments and constitutional adoptions seeks to accomplish, I believe that the classification found in the Article IX-A amendment does not constitute an invidious discrimination; that it seeks to accomplish and promote a valid policy expressive of the will of the people and the intent and purpose of the legislature; and that the distinction upon which the classification for exemption is based does not overstep the limitations imposed by the fourteenth amendment.

APPENDIX B

STATE OF ILLINOIS
COUNTY OF COOK SS

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT, CHANCERY DIVISION

LAKE SHORE AUTO PARTS CO., an Illinois corporation, on its own behalf and also as representative of a class of corporations and other "non-individuals", which class is herein described,

Plaintiffs,

vs.

BERNARD J. KORZEN, County Treasurer and ex-officio County Collector of Cook County, GEORGE E, KEANE and HARRY H. SEMROW, Members of the Board of Appeals of Cook County, P. J. CULLERTON, County Assessor of Cook County, EDWARD J. BARRETT, County Clerk of Cook County, and ROBERT J. LEHNHAUSEN, Director, Department of Local Government Affairs of the State of Illinois,

Defendants.

No. 70 CH 5123

ORDER

This cause coming on to be heard upon the Motion for Summary Judgment of LAKE SHORE AUTO PARTS CO., an Illinois corporation, plaintiff, by and through its attorneys, ORLIKOFF, PRINS, FLAMM & SUSMAN, and upon the Cross-motion For Summary Judgment of defendant ROBERT J. LEHNHAUSEN, Director, Department of Local Government Affairs of the State of Illinois, by and through the Attorney General of Illinois, and the Cross-motion For Summary Judgment of defendants KORZEN, KEANE, SEMROW, CULLERTON and BARRETT, assessing and taxing officials of Cook County, by and through the State's Attorney of Cook County,

The Court having examined the pleadings and memoranda filed by the parties hereto, having heard the arguments of counsel and being fully advised in the premises

DOES HEREBY FIND:

1. That there is no genuine issue as to any material fact in this cause, and it is therefore appropriate and proper that the cause be determined on the Motion and Cross-motions For Summary Judgment.

2. That the plaintiff, LAKE SHORE AUTO PARTS CO., is a corporation duly organized and existing under the laws of Illinois, and on April 1, 1970, was the owner of personal property having a taxable situs in the County of Cook, which property has been included on the assessment role now being prepared by the assessing officials of Cook County for the tax year 1970; that the plaintiff has standing to bring this action on its own behalf, and it is not at this time necessary or appropriate to determine whether the action is properly brought and maintained as a class action or to determine the definition of the plaintiff class.

3. That an amendment to the Illinois Constitution of 1870, designated as Article IX-A, was approved by the people of Illinois at a referendum held on November 7, 1970, and such amendment, by its terms, became effective January 1, 1971; that said Article IX-A purports to prohibit the taxation of personal property by valuation as to "individuals", and only as to "individuals", while leaving unaffected those provisions of the Illinois Constitution and the Revenue Act of Illinois (Ill. Rev. Stat. 1969, ch. 120, § 482 et seq.) which impose such personal property taxes as to property owned by corporations and other "non-individuals".

4. That said Article IX-A is self-executing, and the necessary effect of the adoption thereof is to amend the various provisions of the Revenue Act of Illinois, specifically including but not limited to § 18 thereof (Ill. Rev. Stat. 1969, ch. 120, § 499), so as to exempt from personal property taxes thereby imposed all personal property owned by "individuals", while retaining such taxes as to personal property owned by corporations and other "non-individuals."

5. That the Revenue Act of Illinois, as so amended by Article IX-A of the Illinois Constitution, deprives the plaintiff corporation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States: that said Revenue Act of Illinois, to the extent that it purports to impose personal property taxes with respect to the property owned by plaintiff, is therefore unconstitutional, void and of no effect whatsoever.

6. That Article IX-A of the Illinois Constitution is not applicable with respect to personal property taxes imposed by the Revenue Act of Illinois for the year 1970, the as-

sessment date for which was April 1, 1970, and the assessment of which had been commenced prior to January 1, 1971, the effective date of Article IX-A, notwithstanding that such assessment had not been completed as of that date.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

7. The plaintiff's Motion for Summary Judgment is granted in part and denied in part, the Court declaring that the Revenue Act of Illinois (Ill. Rev. Stat. 1969, ch. 120, §§ 482 et seq.), said Revenue Act having been amended by Article IX-A of the Illinois Constitution, is violative of the Fourteenth Amendment to the Constitution of the United States and is held to be void and unenforceable insofar as said Revenue Act purports to impose personal property taxes on plaintiff.

8. The defendants' Cross-motions For Summary Judgment are granted in part and are denied in part, the Court declaring that Article IX-A of the Illinois Constitution is not applicable to, and does not impair the collection of, personal property taxes imposed by the Revenue Act of Illinois, the assessment of which were commenced prior to January 1, 1971.

9. Except for those matters adjudicated by paragraphs 7 and 8 of this Order, this Court retains jurisdiction of this cause for all purposes.

10. Pursuant to Rule 304(a) of the Rules of the Supreme Court of Illinois, the Court expressly finds that there is no just reason for delaying enforcement or appeal of this Order. In the event of an appeal from this Order, the Court is of the opinion that the interests of justice would be best served by hearing and deciding the appeal as expeditiously as possible because of the manifest pub-

lic importance of the issues and the substantial amount of tax revenues that are involved.

DATED: March 30, 1971.

ENTER:

JUDGE WALTER P. DAHL,
Judge, Circuit Court of
Cook County, Illinois

APPENDIX C

STATE OF ILLINOIS
COUNTY OF COOK SS

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, TAX DIVISION

CLEMENS K. SHAPIRO, JEROME HERMAN, d/b/a THE SPOT, GUY S. ROSS AND EUGENE R. ROSS, d/b/a GUY S. ROSS & CO., a partnership; and M. WEIL AND SONS, INC., an Illinois Corporation, all individually and in representative capacity,

Plaintiffs,

vs.

EDWARD J. BARRETT, County Clerk of Cook County; BERNARD J. KORZEN, County Treasurer and ex-officio County Collector of Cook County; GEORGE E. KEANE and HARRY H. SEMROW, Members of the Board of Appeals of Cook County; P. J. CULLERTON, County Assessor of Cook County, and ROBERT J. LEHNHAUSEN, Director, Department of Local Government Affairs of the State of Illinois,

Defendants.

No. 71 L 5745

ORDER

This cause appears before this Court on plaintiffs' Complaint for Declaratory Judgment, filed pursuant to Chapter 110, Section 57.1 of the Civil Practice Act. The action was filed by plaintiffs for themselves and in a representative capacity on behalf of all other persons similarly situated. The cause comes on for hearing on separate motions, to strike and dismiss that complaint, filed by County and State defendants. Defendants have elected to stand on their motions.

No genuine issue as to any material fact emerges.

The plaintiffs are:

1. Clemens K. Shapiro, is a natural person, citizen and taxpayer of the State of Illinois, resident of and a salaried employee in the County of Cook wherein he owns personal property in his own name, and owns real property jointly with his wife, none of which property is owned or used in the operation of, or for purposes of business, and all of which property is owned and used for his personal enjoyment and that of his family.
2. Jerome Herman, is a natural person, and a citizen of the State of Illinois, and as sole proprietor owns, operates and conducts a business located in Cook County, Illinois, and is the owner of property and a taxpayer herein.
3. Guy S. Ross and Eugene D. Ross, natural persons, citizens and residents of the State of Illinois, both of whom are partners, and as partners operate and conduct a business as a partnership duly organized under the laws of the State of Illinois, which busi-

ness entity is located in the County of Cook and is the owner of property and a taxpayer therein.

4. M. Weil and Sons, Inc., a corporation duly organized and existing under the laws of the State of Illinois, is located in, and is the owner of property situated in the County of Cook and a taxpayer therein.

Each of the plaintiffs is an owner of property subject to the ad valorem tax directed to be imposed by Article IX of the Illinois Constitution of 1870, and imposed by the Illinois Revenue Act of 1939, which property has been assessed by valuation and continues to be so assessed by defendants pursuant to that constitutional and statutory authority.

The electorate of this State, on November 3, 1970, adopted amending Article IX-A to the Illinois Constitution of 1870. This amendment became part of the Illinois Constitution on November 25, 1970, and reads as follows:

"Article IX-A

TAXATION OF PROPERTY

§ 1. Taxation of personal property prohibited

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals.*"

"SCHEDULE

"Paragraph 1. This amendment shall become effective January 1, 1971."

Plaintiffs contend as follows:

All plaintiffs contend that Illinois Constitution of 1870, as amended by the addition of Article IX-A, specifically prohibits, and declares to be unconstitutional the imposition, in Illinois, of the property taxes imposed by Ar-

ticle IX, Section 1, on *all* forms of property, real and personal or other, regardless of the ownership of that property or the use to which that property is put by its owner.

All plaintiffs contend that if Article IX-A does not prohibit the taxation of all property, then Article IX-A prohibits the tax to be measured by the value of the property taxed.

All plaintiffs contend that the prohibition of Article IX-A, which abolishes the imposition of property tax measured by valuation of the property taxes, extends to those taxes so measured where the assessment of plaintiffs' property has been commenced by defendants prior to, even though not completed on January 1, 1971, the effective date of Article IX-A, and payment due thereafter.

Natural Persons contend that:

The designation "individuals" in Article IX-A properly and validly describes, is intended to apply, and does apply solely to them; and the taxation by valuation prohibited in Article IX-A, if not applicable to all property owned by them, is applicable to personal property owned by them and used by them for their personal purposes; and that,

Article IX-A prohibits taxation, by valuation of personal property as to them alone, while denying that prohibition as to all others, is proper, valid, and constitutional under both Illinois Constitution and the Constitution of the United States.

Both business entities and corporations contend that:

Article IX-A, effective January 1, 1971, as an amendment to Illinois Constitution of 1870 is offensive to the Constitution of the United States.

If the designation "individuals" in Article IX-A invokes prohibition of taxes by valuation on personal property exclusively as to "natural persons" and personal property owned by them, but denies the same prohibition to business entities and corporations, then such classification is discriminatory, unreasonable and offensive both to Illinois Constitution and the Constitution of the United States. This is true for the reasons that such classification is invalidly predicated upon purported differences between *users* of identical property and the *use* to which that property is put, instead of differences found to exist between the forms of the property upon which that tax is directly laid. The employment of such base constitutes special legislation prohibited by Article IV, Section 22 of Illinois Constitution, as well as denying to business entities and corporations due process of law and the equal protection of the law guaranteed to them by Article II, Section 2 of the Illinois Constitution, and the Fourteenth Amendment to the Constitution of the United States.

Unless the exclusion of property owned by "individuals" is construed to exclude the property of business entities and corporations, as well as that of natural persons, then the employment in Article IX-A of the term "individuals" is so vague, uncertain, and incapable of definitive application to the context of Article IX, that Article IX-A must fall because it is totally absent the comprehension required, especially of constitutional provisions, by both Illinois Constitution and the Constitution of the United States.

Business entities contend that:

(a) The designation "individuals" in Article IX-A is correctly and properly described, and is intended to apply to, and does include business entities which own property because the natural person owners of that business en-

tity are personally and individually liable for the payment of that tax.

Article IX-A prohibiting taxation by valuation of property owned by such business entities, while denying that prohibition as to corporations is proper, valid and constitutional under both Illinois' Constitution and the Constitution of the United States.

Corporations contend that:

If the designation "individuals" in Article IX-A applies to any or all owners of property except corporate owners of property, then such classification is discriminatory, unreasonable, and offensive to both the Illinois Constitution and the Constitution of the United States.

Defendants contend that the taxation by valuation of real property and other property, as provided in Article IX shall continue and remain, in all regards, unaffected by Article IX-A; however:

Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited only as to natural persons; but as to them, only as to the personal property owned by them; but as to that personal property owned by them, only such of that property which is used by them for the personal enjoyment of themselves and their families.

This matter appearing on the pleadings aforesaid, presenting the issues to this Court as delineated by those pleadings, and the Court having heard arguments by all parties in support of their respective positions, THIS COURT FINDS:

1. That a genuine cause and controversy exists, and that this action is properly maintained under the provisions of

Chapter 110, Section 57.1 (Declaratory Judgments), Civil Practice Act, Illinois Revised Statutes, 1969.

2. Each of these plaintiffs has standing to bring this action in his or its own behalf and is a proper representative of his class.

3. That this action is properly maintained as a class action, and the members of those classes are adequately and competently represented by counsel herein.

4. That Article IX-A of the Illinois Constitution of 1870 is valid, constitutional and immune to all of the plaintiffs' assaults, both under the Illinois Constitution and the Constitution of the United States.

5. That Article IX-A is free of the ambiguity and uncertainty of intendment charged by the plaintiffs, and that its intendment is clearly declared to prohibit the taxation of personal property by valuation exclusively as to natural persons, where that property is used, by them, for the personal enjoyment of themselves and their families.

6. That these findings by this Court make it unnecessary to consider contentions made by plaintiffs in the alternative.

7. That all issues as found heretofore are found in favor of the defendants, except as to those issues relating to the plaintiff Clemens K. Shapiro and members of his class involving personal property owned and used by them for the personal enjoyment of themselves and their families.

8. That motions to strike and dismiss plaintiffs' Complaint are sustained in regards and in respect of those found in favor of the defendants, except as to those issues raised by plaintiff Clemens K. Shapiro and members of his class involving personal property owned and used by

them for the personal enjoyment of themselves and their families.

9. Pursuant to Rule 304(a) of the Rules of the Supreme Court of Illinois, the Court expressly finds that there is no just reason for delaying enforcement or appeal of this Order. In the event of an appeal from this Order, the Court is of the opinion that the interests of justice would be best served by hearing and deciding the appeal as expeditiously as possible because of the manifest public importance of the issues and the substantial amount of tax revenues that are involved.

WHEREFORE, IT IS ORDERED, ADJUDGED and DECREED that defendants' motions to strike and dismiss are sustained as to all plaintiffs, except the plaintiff Clemens K. Shapiro and members of his class, and plaintiffs' Complaint is stricken as to all issues and in all regards and respects contrary to and in variance with the judgment of this Court; that Amending Article IX-A of the Illinois Constitution is valid and constitutional in all respects and is immune to attack under any provision or provisions of the Illinois Constitution of 1870 and the United States Constitution, and that said Amending Article IX-A declares its prohibition exclusively as to any personal property tax on the personal property owned by individuals and used for their personal enjoyment and that of their families.

ENTER:

THOMAS C. DONOVAN,
Presiding Judge, Tax Division,
Circuit Court of Cook County,
Illinois.

Date: May 27, 1971

APPENDIX D

January 22, 1971

FILE NO. S-260
TAXATION:
Personal Property
Tax Exemption

Honorable Robert J. Lehnhausen
Director, Department of Local
Government Affairs
325 West Adams Street
Springfield, Illinois 62704

Dear Sir:

I have your recent letter wherein you state:

"The Department of Local Government Affairs is vested with certain statutory powers and duties relating to the assessment of property for property tax purposes, among which are the following:

"1. 'Assist and advise the local governments of the State in matters pertaining to — the assessment and equalization of property—'.

"2. 'Direct and supervise — the assessment for taxation of all real and personal property in this State—'

"3. 'Confer with, advise and assist local assessment officers relative to the assessment of property for taxation'. (Chapter 127, Paragraph 63b14.13 and Chapter 120, Paragraph 611, I.R.S.)

"Pursuant to such statutory provisions, inquiries have been made by local assessment officers concerning the effect of the amendment to the Illinois Constitution, approved by referendum on November 3, 1970, prohibiting, as to individuals, the taxation of personal property by valuation.

"We would appreciate receiving your opinion as to the following:

"1. Is an individual proprietor to be exempt from taxation on his business inventory and other personal property used in such business?

"2. Is the individual farmer exempt from taxation on farm equipment and personal property owned in his capacity as an individual farmer?

"3. Is the personal property of partnerships exempt, or will such personal property be taxable under the Revenue Act of 1939 because a partnership is considered to be an entity (even though composed of individuals) which requires treatment different from that accorded natural persons under the new Constitutional amendment?

"4. Is the personal property of a decedent's estate exempt from personal property tax if the heirs or legatees are individuals?

"5. Is the personal property of a decedent's estate exempt from personal property tax if the legatee is a corporation?

"6. Is the personal property held by an individual trustee exempt from taxation if the beneficiaries or beneficial owners are individuals? Is the answer different if the property is held by a corporate trustee?

"7. Is the personal property owned by tenants in common or joint tenants exempt from taxation?

"8. Is the personal property owned by a joint venture or other co-ownership exempt from taxation?

"Although the next assessment of personal property will be April 1, 1971, local assessing officials must soon begin to order the printing of forms for such assessment, and Supervisors of Assessment must be prepared to advise township assessors as required by Section 2 of the 'Revenue Act of 1939', (Chapter 120, Paragraph 483, I.R.S.). We would, therefore, appre-

ciate receiving your opinion at your earliest convenience."

As you have indicated in your letter, the amendment to the Illinois Constitution, approved by referendum on November 3, 1970, prohibits the taxation of personal property by valuation as to individuals. Your attention is called to Paragraph 499 of Chapter 120, 1969 Illinois Revised Statutes which states as follows:

"The property named in this section shall be assessed and taxed except so much thereof as may be, in this act, exempted:

"First: All real and personal property in this state.

"Second: All moneys, credits, bonds or stocks and other investments, the shares of stock of incorporated companies and associations, and all other personal property, including property in transit to or from this state, used, held, owned or controlled by persons residing in this state, and all intangible personal property of foreign corporations, except those excluded by section 18 of this Act, doing business in this state which is located in this state and used in their business transacted within the state, provided that the provisions of this section relating to the taxation of intangible personal property shall not apply to those foreign corporations which are required by law to pay a premium tax for the privilege of doing business in this state.

"Third: The shares of capital stock of banks and banking companies doing business in this state.

"Fourth: The capital stock of companies and associations incorporated under the laws of this state.'

It can be observed from the language of the foregoing Paragraph 499 that the personal property tax is a tax upon

the personal property itself. Paragraph 534 of Chapter 120 does, of course, set forth certain rules pertaining to the listing of personal property but these do not change the nature of the personal property tax which is a tax upon the personal property.

It therefore becomes necessary for us to determine the effect of the constitutional amendment which prohibits the taxation of personal property by valuation as to individuals. It would be unreasonable to believe that the language of the constitutional amendment could expressly include each and every conceivable situation. Necessary implications and intendments from the language used in a statute may be resorted to in order to ascertain the legislative intent. See *U.S.* v. *Jones,* 204 Fed. 2d 745 (certiorari denied 346 U.S. 854). In that case the court said at page 754:

> "Necessary implication refers to a logical necessity; it means that no other interpretation is permitted by the words of the Act construed; and so has been defined as an implication which results from so strong a probability of intention that an intention contrary to that imputed cannot be supported. 42 C.J.S., page 405 and cases there cited. The term is used where the intention with regard to the subject matter may not be manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances and the general language. *Burford* v. *Huesby,* 35 Cal. App. 2d 643, 96 P. 2d 380; *Goldfein* v. *Continental Ins. Co.,* 125 Neb. 112, 249 N.W. 78; 42 C.J.S., page 406. Consequently that which is implied in a statute is as much a part of it as that which is expressed, for a statutory grant of a power carries with it, by implication, everything necessary to carry out the power and make it effectual and complete. • • •"

Furthermore, at page 100 of Volume 34 of Illinois Law and Practice is found the following statement:

> "In construing a statute to give effect to the legislative intent and purpose, the court should, if possible, give it a reasonable, sensible, practice, and commonsense construction even though such construction qualifies the universality of its language."

As indicated above, the personal property tax is a tax upon the personal property itself. The only logical conclusion then as to the meaning of the constitutional amendment (Article IX-A) is that if the effect of the tax would be directly upon an individual (as distinguished, for example, from a corporation) then such personal property tax is abolished.

Article IX-A of the Illinois Constitution of 1870 became effective January 1, 1971 and is as follows:

> "Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

Provision for the adoption of Article IX-A was made by Senate Joint Resolution No. 30 of the 76th General Assembly which reads as follows:

> "RESOLVED, BY THE SENATE OF THE SEVENTY-SIXTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX-A to the Constitution, the added Article to read as follows:

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals.*

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971."

Also pertinent is Senate Joint Resolution No. 67 which provides:

"RESOLVED, BY THE SENATE OF THE SEVENTY-SIXTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that, in adopting Senate Joint Resolution No. 30, which submits to the electors of this State a constitutional amendment prohibiting the taxation of personal property by valuation as to individuals, it was the intention of this General Assembly to abolish the ad valorem taxation of personal property owned by a natural person or by two or more natural persons, and that, by the use of the phrase 'as to individuals', this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common."

Turning now to the questions which you have asked, I shall discuss them in order. Your first question asks whether an individual proprietor is exempt from taxation on his business inventory and other personal property used in such business. Since the effect of such a tax would be upon an individual, I am of the opinion that the individual proprietor would be exempt. Similarly, the individual farmer is exempt in your second question.

Thirdly, you have inquired as to whether personal property of a partnership is exempt. A partnership is an asso-

ciation of two or more persons to carry on a business for profit. The effect of the taxation of partnership property would be directly upon the individual partners and consequently I am of the opinion that such property is also exempt.

In your fourth and fifth questions you inquired about the taxability of personal property in a decedent's estate. The effect of taxation of personal property in an estate would be directly upon the heirs of legatees. Consequently, if the heirs or legatees are individuals such personal property is exempt, but if the legatee is a corporation then such personal property would be subject to tax.

In your sixth question you inquired whether personal property held by an individual trustee is exempt from taxation if the beneficiaries or beneficial owners are individuals. Since the effect of the tax would be directly upon an individual beneficiary, such personal property would be exempt. The fact that the trustee is a corporation or an individual would make no difference.

Seventh, you inquired whether personal property owned by tenants in common or joint tenants as individuals is exempt. For the reasons stated above, such personal property would also be exempt. Personal property owned by individuals in a joint venture or other co-ownership would also be exempt since the effect of the tax would be upon individuals.

Very truly yours,
ATTORNEY GENERAL

APPENDIX E

Testimony of Maurice W. Scott, Executive Vice President, Taxpayers' Federation of Illinois, to Members of House Revenue Committee.

September 8, 1971

Chairman Randolph and Members of the House Revenue Committee:

Without repeating what is now history, we all know that the Illinois Supreme Court by its recent decision in the Lake Shore Auto Parts Co. v. Korzen case, Nos. 44199, 44308 and 44432, held that the Illinois Constitution, as modified by Article IX-A which was approved last fall by the people by a ratio of more than 7 to 1, may not validly classify exemptions from ad valorem personal property taxation on the basis of the ownership of the property, and that such exemption may be made only upon a classification based upon the nature of the property or its use. In other words, the amendment which supposedly abolished the personal property tax on an ad valorem basis on individuals, and which was submitted by the General Assembly to the voters on November 3, 1970 with much success, no longer prevails. In dollar figures what does this decision mean? It means that the ad valorem personal property tax as it was on November 2, 1970, is still with us and breaks down approximately as follows relative to amounts actually collected:

(a) *Cook County*—	
Personal property tax on corporations	$126,000,000
Personal property tax on unincorporated business	13,000,000
Personal property tax on individuals	2,000,000
	$141,000,000
(b) *Downstate Counties*—	
Personal property tax on corporations	$111,000,000
Personal property tax on unincorporated rated business	20,000,000
Personal property tax on individuals	27,000,000
	$158,000,000

In 1969 the General Assembly passed a bill (S.B. 816) which exempted from personal property taxation household furniture used for the personal living purposes of the owner at his residence and one automobile used for personal pleasure purposes per household. This statute, Chapter 120, par. 500.21a, Illinois Revised Statutes, was not before the Court in the Lake Shore Auto Parts Co. case and is still valid. Under its provisions, taxpayers are relieved from paying about $6,000,000 in ad valorem personal property taxes in Cook County and approximately $53,000,000 in downstate counties.

It is a known fact that the people in Illinois are resentful of the Lake Shore decision, and they can't understand how the Court can over-turn their overwhelming decision last fall in approving the amendment to abolish the personal property tax on individuals. As a result of their resentment, we are meeting here today. Let us examine some of the complications and remedies as I see them.

In the new State Constitution, Section 5(a) of Article IX provides that the Legislature "may classify personal

property for purposes of taxation by valuation, abolish such taxes on any or all classes and authorize the levy of taxes in lieu of the taxation of personal property by valuation." Without more, it could be argued that the word "classes" refers only to classes of property, but Section 5(c) of Article IX of the new Constitution refers to the abolition of ad valorem personal property taxes by January 1, 1979, and the replacement of the lost revenue, and provides: "Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971." It is the opinion of many, and one that I lean to, that the word "classes" as used in said Section 5(c) does not refer to classes of property, but refers to classes of property owners and provides for taxation according to the character of the owner. If the decision of the Lake Shore Auto Parts Co. case is to stand and Article IX-A held to be unconstitutional, then under consistent reasoning, it could be argued with weight that Section 5(a) of Article IX of the new Constitution is also unconstitutional. In fact, I am doubtful of the constitutionality of the statute which exempts household furniture and one personal automobile per household if it is tested in the Courts. But a statute is presumed valid until it is proven otherwise, so we won't go into that phase of crystal gazing today, as we already have enough problems before us.

Now, I get to the nub of my presentation. It is my opinion that if the General Assembly, this fall or next year, does anything in the area of abolishing the personal property tax on an ad valorem basis, the safest thing to do would be to abolish it on all taxpayers—both on individ-

nals and on business, and make up lost revenues from both types of taxpayers. In this regard, the General Assembly would be faced with making up about $300,000,000 in revenue.

I offer the following for consideration by members of the General Assembly in studying the problem of replacing revenues.

(1) The new State Constitution, Article IX, Section 5(c), provides that when the General Assembly abolishes the personal property tax on an ad valorem basis, it shall replace all revenue lost by units of local governments as a result of the abolition of personal property taxes subsequent to January 2, 1971, by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying personal property because of the abolition of such taxes subsequent to January 2, 1971. Does this mean that a taxpayer who does not pay any personal property tax as of today because his household furniture and personal automobile are exempt, is not subject to any statewide replacement taxes that the General Assembly might enact?

Although not entirely free from doubt, my opinion is that he would be subject to statewide replacement taxes, because the "household furniture, personal automobile exemption" did not free him entirely from the ad valorem personal property tax. He is still subject to a personal property tax levied on the assessment of such items as animals, campers, clothes on his back, money in his pocket or in the bank, jewelry, etc.

(2) My telephone has been deluged, and I know yours has too, since the decision in the Lake Shore Auto Parts Co. case last July, and the tenor of the public is: "Abolish the ———— personal property tax now, immediately, and replace the lost revenues from the State Income Tax." This idea and action thereon to carry it out by the Legislature would be most popular with the public, but in the name of sense, how can it be done at this late hour when the Governor had to veto and reduce recent appropriations to balance the budget for fiscal 1972? Do you as Legislators have the fortitude to cut or abolish present programs and to reduce spending sufficiently to come up with $300,000,000 for local governments? It is possible but not probable, and such action, if you could do it, would be "the shot heard around the world."

In all fairness, may I state that through your action in 1969, counties and municipalities share in State Income Tax receipts to the extent of 1/12 and on a per capita basis. To insure property tax relief, maybe the Legislature should require a certain percent of such revenues be used by counties and municipalities for property tax relief and not use all of such receipts as additional spending revenues. A few counties and municipalities have carried out this idea on their own initiative in 1971 and reduced corporate fund levies.

Also, it should be noted that the common schools share heavily in the State Income Tax receipts through the School Formula, and this is a result of your previous action. In fact, in school year 1968-69, State aid claims paid to the common schools amounted to $369.7 million, while in school year

1969-70 such State aid claims amounted to $601.2 million, a percentage increase of approximately 63% in a period of one year.

(3) The State Income Tax for fiscal 1972 (July 1, 1971 to July 1, 1972) is estimated to yield a total of 1.081 billion, or $864 million from individuals and $217 million from corporations.

Projecting this figure, I estimate that an additional State Income Tax rate of 1% on both individuals and corporations would yield about $430 million in a 12 month period, or $360 million from individuals and $70 million from corporations. This takes into consideration the fact that the additional 1% rate would be free of deductions, credits, exemptions, etc.

In fact, on this basis an additional rate of 3/4 of 1% would produce approximately $322 million in a 12 month period, enough to replace revenues equivalent to the personal property tax receipts that would be collected for the year 1971.

(4) The State R.O.T. and Use Tax revenue estimates for fiscal 1972 are $1.085 billion (State rate is 4%). An additional rate of 1% would yield approximately $272 million in a 12 month period.

(5) Realizing the problem presented in (1) above, it is my opinion that the General Assembly should consider the replacement revenue possible for local governments which could be raised from a State wheel tax. In 1969 there were 4,349,697 passenger automobiles registered in the State of Illinois and 915,980 trucks, busses and trailers. A State wheel

tax of $10 on each such vehicle, for example, collected by the State when such vehicles are registered annually with the State, and the receipts therefrom returned to local governments, would yield at least $52 million a year. Airplanes and boats are also registered with an agency of government in the State of Illinois, and a State wheel tax on such "vehicles" would produce additional revenue.

(6) The State R.O.T. rate of 4% extended to repair and alteration of real property or to real estate contracts would bring in more than $20 million a year (see Illinois Legislative Council, File 7-535, January 1970).

(7) The public utility tax on sales of gas, electricity and telephone and telegraph messages at the current rate of 5% is estimated to yield around $160 million for fiscal 1972. An additional 1% to this rate would yield some $32 million a year.

(8) The State insurance premium tax for fiscal 1972 at a rate of 2% on gross premiums on all foreign insurance companies doing business in Illinois is estimated to yield $53 million for fiscal 1972. An additional 1% to the rate on such premiums would yield approximately $26.5 million.

(9) The corporate franchise tax is estimated to yield for fiscal 1972 around $25 million (the present rate is one tenth of 1% of stated capital and paid-in surplus, with a minimum of $25 and a maximum of $1 million).

(10) The State cigarette tax at a rate of 12 cents per package is estimated to yield $147 million for fiscal

1972. A rate of 1% is estimated to yield $12-1/4 million in a 12 month period.

(11) The liquor taxes for fiscal 1972 are estimated to yield around $72 million. The rate on distilled spirits is $2 per gallon, wine at 23 cents to 60 cents per gallon, and beer at 7 cents per gallon.

(12) For your convenience, may I list the revenues expected for fiscal 1972 from what may be classified as fees and miscellaneous taxes as follows:

Racing taxes to General Fund	$ 27,000,000	
Interest on State investments	44,000,000	
Real Estate Transfer Tax (State's share)	2,000,000	
Hotel Tax	9,500,000	
R. O. T. collection fee (local governments)	4,000,000	
Illinois Central R.R. Franchise	4,250,000	
Private Car Lines	2,250,000	
S. O. T. Trust Fund	16,000,000	(one shot proposition)
Auto Title Registration Fees	6,000,000	
Supt. of Public Instruction (reimbursement from Dept. of Public Aid)	4,750,000	
Dept. of Registration & Education	3,500,000	
Rentals from School Building Commission	2,750,000	
Miscellaneous Fees and Dept. Earnings (Fees of Departments, liquor licenses, Public Assistance Recovery fees, financial examination fees, etc.)	4,000,000	
	$130,000,000	

APPENDIX F

August 19, 1971

Robert J. Lehnhausen
Director, Dept. of Local Government Affairs
State of Illinois
325 W. Adams Street
Springfield, IL 62704

Dear Sir:

Enclosed is a copy of the Resolution adopted by the Rock Island County Board of Supervisors at their regular monthly meeting on August 17, 1971. The same is being forwarded to your office for whatever action your department deems necessary.

It is the opinion of my office that this particular Resolution has no legal effect whatsoever upon the statutory obligations of the Supervisr of Assessments and/or the Board of Review and I will advise these officials accordingly.

Since it is apparent that this situation is somewhat unique, I would be extremly hesitant to make any statements as to the exact point in time at which your department will intervene in this situation and issue an order, pursuant to the appropriate provisions of the Revenue Act.

Since it is my opinion that the Supervisor of Assessments or the Board of Review could proceed to assess the personal property in Rock Island County which was obviously omitted by the township assessors, there is still a possibility that local officials will make an effort to assess personal property according to law. I do not feel, however, that I can make any statements on behalf of the Supervisor of Assessments of the Board of Review at this time.

If you desire any additional information in respect to this matter, do not hesitate to contact my office. My staff

and I will make every effort to co-operate with your department in reaching a satisfactory solution to this problem.

Very truly yours,

s/ James N. DeWulf
James N. DeWulf
State's Attorney

Resolution No. 5

RESOLUTION

WHEREAS, the taxpayers of the County of Rock Island have been assessed for the year 1971 for taxes to be extended and collected in 1972 pursuant to the law of the State of Illinois as the same existed from and between the dates of April 1, 1971 and first day of June 1971, and

WHEREAS, the Supreme Court of Illinois has subsequent to the dates herein above mentioned pronounced that certain referendum mandate relating to personal property taxation duly voted by the electorate is now discriminatory, ineffective, and void, and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF ROCK ISLAND COUNTY, ILLINOIS, on behalf of the taxpayers of the County of Rock Island that no funds be made available or committed to a retroactive assessment of personal property for the year 1971 and that as a statement of policy determines that no such further assessment shall be made in the County of Rock Island for the year 1971.

ADOPTED BY THE BOARD OF SUPERVISORS OF ROCK ISLAND COUNTY, ILLINOIS THIS 17th DAY OF AUGUST, 1971.

24—Yes.

10—No.